

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF EMANUEL RUBIN, M.D.

23 Volume I, Pages 1- 243

24

25

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1           (The following is the Deposition of EMANUEL  
2 RUBIN, M.D., taken pursuant to Notice of Taking  
3 Deposition, at the offices of Dorsey & Whitney,  
4 Attorneys at Law, Pillsbury Center South, 220 South  
5 Sixth Street, Minneapolis, Minnesota, on September 4,  
6 1997, commencing at approximately 8:36 o'clock a.m.)

## 7 APPEARANCES:

8           On Behalf of the Plaintiffs:

9           Richard L. Gill  
10          Robins, Kaplan, Miller & Ciresi  
11          Attorneys at Law  
12          2800 LaSalle Plaza  
13          800 LaSalle Avenue  
14          Minneapolis, Minnesota 55402

15          On Behalf of Philip Morris Incorporated:

16          Robert A. Schwartzbauer  
17          Dorsey & Whitney  
18          Attorneys at Law  
19          Pillsbury Center South  
20          220 South Sixth Street  
21          Minneapolis, Minnesota 55402-1498

22  
23  
24  
25

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 On Behalf of Lorillard Tobacco Company:

2 William L. Allinder

3 James P. Hostetter, M.D./Attorney

4 Vicki B. Thompson, Senior Analyst

5 Shook, Hardy & Bacon

6 Attorneys at Law

7 One Kansas City Place

8 1200 Main Street

9 Kansas City, Missouri 64105

10

11 David G. Martin

12 Doherty, Rumble & Butler

13 Attorneys at Law

14 2800 Minnesota World Trade Center

15 30 East Seventh Street

16 St. Paul, Minnesota 55101-4999

17

18 On behalf of The Council for Tobacco

19 Research-U.S.A.:

20 R. Lawrence Purdy

21 Maslon Edelman Borman & Brand

22 Attorneys at Law

23 3300 Norwest Center

24 90 South Seventh Street

25 Minneapolis, Minnesota 55402-4140

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

## 4

2 WITNESS EXAMINED BY PAGE

4

5

6

| 8 | EXHIBIT | DESCRIPTION | MARKED |
|---|---------|-------------|--------|
|---|---------|-------------|--------|

9 Plfs.

10 Ex. 3500 Doc. ent. "A Frank Statement 202

11 to Cigarette Smokers"; 1 page

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<http://legacy.library.ucsf.edu/tid/wjw05a00/pdf> <http://industrydocuments.ucsf.edu/docs/sjhd0001>

1 MR. GILL: Swear Dr. Rubin, please.

2 P R O C E E D I N G S

3 (Witness sworn.)

4 EMANUEL RUBIN, M.D.,

5 having been called as a witness and having been first  
6 duly sworn, testified under oath as follows:

7 EXAMINATION

8 BY MR. GILL:

9 Q. Dr. Rubin, if any of my questions aren't clear  
10 to you this morning, would you let me know about that  
11 so that I can rephrase them?

12 A. I will.

13 Q. If you don't mention anything, I'll that assume  
14 you understand the questions. Is that fair enough?

15 A. That's fair.

16 Q. Dr. Rubin, have you done some prior work in the  
17 field of tobacco use and health before being retained  
18 by attorneys on behalf of the tobacco companies?

19 A. It all depends what you mean by "work". I have  
20 written on the subject of tobacco and health. I have  
21 never done laboratory or clinical investigation in  
22 the area.

23 Q. Either requested by the tobacco companies or  
24 requested by anybody else?

25 A. That is correct, yes.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And as I understand it, the conclusions that you  
2 have come to based upon your review of the literature  
3 on the subject of tobacco and health is that usage of  
4 cigarettes causes cancer and other diseases?

5 A. That is my view.

6 Q. When were you first contacted on behalf of  
7 attorneys representing the tobacco industry in  
8 connection with serving as a consultant?

9 A. I believe it was early 1995.

10 Q. How did that come about?

11 A. Mr. William Allinder communicated with me and  
12 actually came to visit me in my office.

13 Q. In Philadelphia?

14 A. In Philadelphia.

15 Q. Had you known Mr. Allinder prior to that  
16 contact?

17 A. I had not.

18 Q. Did anybody approach you before Mr. Allinder in  
19 connection with the same subject?

20 A. Not that I recall.

21 Q. Did Mr. Allinder initially telephone you before  
22 he arrived at your office in Philadelphia?

23 A. Yes, he did.

24 Q. And at that time he introduced himself and that  
25 was the first time that you and he had ever spoken?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. We may have spoken on the telephone prior to his  
2 visit. He did not show up like Minerva from the brow  
3 of Zeus, no.

4 Q. And in connection with the telephone call, at  
5 that time you didn't know Mr. Allinder?

6 A. I did not.

7 Q. And what did he tell you was the reason he was  
8 contacting you?

9 A. He wanted to discuss the possibility that I  
10 might embark upon a study for his firm.

11 Q. And did he indicate on behalf of which clients  
12 of his firm that you would be working if you did  
13 embark upon this study?

14 A. He indicated that it was in the area of tobacco,  
15 but we never discussed the specific clients or  
16 specific companies for which his firm was engaged.

17 Q. Did that subject come up at the time that you  
18 had your official face-to-face meeting in  
19 Philadelphia?

20 A. No. The -- the subject that came up was  
21 actually related to the activities of The Council for  
22 Tobacco Research.

23 Q. And how did he put that subject to you?

24 MR. SCHWARTZBAUER: Objection. I'll  
25 instruct the witness not to answer. I believe that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 invades work product, and furthermore, it's contrary  
2 to what we've agreed to with respect to protocols of  
3 inquiries into expert witnesses in the case. Thank  
4 you.

5 Q. Well during the initial contact by telephone I  
6 -- I take it you must have indicated some  
7 willingness to consider whatever assignment Mr.  
8 Allinder had in mind; is that a fair statement?

9 A. I wouldn't turn down a job that has never been  
10 offered.

11 Q. You essentially told them "If you want to come  
12 out and talk to me about it, I'm available to meet  
13 with you?"

14 A. Essentially.

15 Q. All right. And then the specifics were actually  
16 covered during the face-to-face meeting in  
17 Philadelphia?

18 A. Yes.

19 Q. And did you obtain an understanding as a result  
20 of that meeting as to the nature of the assignment  
21 that you were going to be undertaking?

22 A. I did.

23 Q. And I take it you agreed to undertake this  
24 assignment?

25 A. I either agreed on the first meeting or the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 second meeting. I don't recall whether I agreed  
2 instantaneously or not; I may have, or I may have  
3 delayed it for a second meeting.

4 Q. And I take it that you understood that with  
5 respect to this assignment you would be paid for your  
6 time?

7 A. That was my understanding.

8 Q. As opposed to doing it on some sort of a  
9 charitable basis?

10 A. I am a charitable person, but in this respect I  
11 expected to be paid.

12 Q. What then was your understanding of the  
13 assignment that you ultimately agreed to accept?

14 MR. SCHWARTZBAUER: Same objection as  
15 before.

16 Q. I think you can answer that one, Dr. Rubin.

17 MR. SCHWARTZBAUER: I don't see how he can  
18 answer that without invading the substance of the  
19 discussions between himself and Mr. Allinder.

20 MR. GILL: Well I've simply asked him for  
21 the -- his understanding of the assignment that he  
22 understands he embarked upon.

23 MR. SCHWARTZBAUER: I understand that, but  
24 in prior depositions when similar subjects invading  
25 the communications between Plaintiffs' counsel and

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Plaintiffs' expert witnesses have come up, the  
2 witness has been instructed not to answer, so we're  
3 going to play by the same rules until we get a  
4 further resolution of this.

5 MR. GILL: Well, Bob, I don't know how I  
6 can inquire thoroughly as to his opinions if I don't  
7 know what his assignment is.

8 MR. SCHWARTZBAUER: Well, I think you can.  
9 You have his reports and so his opinions to the  
10 extent he plans on testifying to them are certainly  
11 outlined and contained basically within that report.  
12 When we've inquired about related subjects we've been  
13 prohibited on the grounds of work product from  
14 inquiring into the assignments given by counsel for  
15 the Plaintiffs. You can -- you can certainly ask him  
16 what his opinions are and you can certainly ask him  
17 what his reports says and you can ask him about facts  
18 relevant to those issues, but I don't think you can  
19 inquire into communications or instructions given by  
20 counsel for the Plaintiffs -- or excuse me -- for the  
21 Defendants in the case.

22 MR. GILL: Well can you just tell me, Bob,  
23 what were the depositions where our side instructed  
24 our experts not to divulge their assignments?

25 MR. PURDY: I can give you one specifically

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 is Dr. Hurt recently, I was there, and Miss Walburn  
2 on behalf of Plaintiffs -- and this is Larry Purdy  
3 for CTR -- absolutely precluded any discussion  
4 whatsoever into communications between the counsel  
5 for the Plaintiffs and Dr. Hurt and indicated that  
6 was their position and they would not permit it.

7 MR. SCHWARTZBAUER: The other two that come  
8 to mind are the depositions of Dr. Samet and the  
9 deposition of Dr. Channing Robertson.

10 MR. GILL: And as opposed to communications  
11 with counsel, you're telling me that Plaintiffs'  
12 attorneys instructed Plaintiffs' expert witnesses  
13 that they could not divulge their understanding of  
14 the assignment that they had undertaken?

15 MR. PURDY: Let -- let me just -- counsel,  
16 what was clear is that any question which crossed  
17 into communications between the lawyers and the  
18 witness, the lawyers for the party and the witness,  
19 would not be permitted, that it was an invasion of  
20 work product, and I think what Mr. Schwartzbauer has  
21 said, and I agree with him, is that your question --  
22 how can it be answered if he doesn't get into the  
23 communications? I would say this: If you can  
24 rephrase your question where you're not attempting to  
25 get communications from the lawyers to Dr. Rubin,

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 then I think you can ask that, and it's no effort to  
2 preclude you from finding out what Dr. Rubin's -- I  
3 mean obviously he's given you a report, you  
4 understand what his assignment is, he's told you what  
5 the subject is, you can talk about those things.  
6 Where you cross over and begin to invade the  
7 discussions between the lawyers and Dr. Rubin, we  
8 have to stand on the same position that your people  
9 have taken.

10 BY MR. GILL:

11 Q. Dr. Rubin, let me apologize if my question then  
12 wasn't clear. I'm not seeking to inquire now as  
13 to specific communications from Mr. Allinder to you,  
14 but at some point in this case you have prepared a  
15 report that contains opinions; correct?

16 A. That is correct.

17 Q. And what I'd like to know is that in connection  
18 with those opinions what was your understanding of  
19 what it was that you were assigned to investigate?

20 A. It was my understanding that certain allegations  
21 had been made regarding the activities of The Council  
22 for Tobacco Research. It was my further  
23 understanding that I was requested to review the  
24 topic and report to Mr. Allinder my findings as to  
25 whether I agreed with those allegations or whether I

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 disagreed with them and the reasons for either one.

2 Q. So there were specific allegations that you were  
3 going to investigate related to the conduct of CTR?

4 A. That's correct.

5 Q. And what was your understanding of those  
6 allegations as to which you were going to make an  
7 investigation?

8 A. Briefly, it was that the allegation or  
9 accusation had been made that the CTR was not a  
10 legitimate grant-funding institution and that it  
11 represented a front, sham or fraudulent activity.

12 Q. Any others? You do have to answer audibly.

13 A. I think that's pretty good.

14 Q. You think that's complete?

15 A. Well, I don't want to say that I'm going to  
16 withdraw my right to add to that or amend it as my  
17 memory serves me, but that is the -- the substance of  
18 the allegations.

19 Q. All right. In other words, at the moment the  
20 only allegations that come to mind that you were  
21 asked to investigate were the two that you just told  
22 me about?

23 MR. ALLINDER: Objection as to form of the  
24 question.

25 Q. Is that correct, Dr. Rubin?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I'm not aware of two.

2 Q. I think I heard you say an allegation that CTR  
3 was not a legitimate grant-funding institution. Did  
4 I hear that correctly?

5 A. Well I -- I am including that as a -- an  
6 alternate way of saying that it was a sham or a  
7 front, illegitimate, whatever you want to call it.

8 Q. Now since you were being paid for your time, I  
9 take it that you confined your research to those  
10 subjects?

11 A. I was not under a prohibition to refrain from  
12 reading other materials.

13 Q. Let me try to rephrase that because I don't  
14 think my question was clear. I wasn't speaking there  
15 to the nature of the materials that you reviewed in  
16 connection with that allegation, but simply  
17 suggesting that since you were being paid for your  
18 time, I take it that you confined your research to  
19 that particular allegation and your findings  
20 thereon. Is that fair?

21 A. Well I've read a lot of material that relates to  
22 these allegations; some of them contain material that  
23 is directly relevant or pertinent to that topic, some  
24 of them indirectly relevant, and I would say that  
25 some of them that provide an understanding of the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1  ambience or the environment in which these  
2  discussions are occurring.

3  Q.   But all related to the allegation that the CTR  
4  was either not a legitimate grant-funding institution  
5  or that it was a front or a sham?

6           MR. ALLINDER:  Objection, misstates his  
7  testimony.

8  Q.   Is that true?

9  A.   My motive in reviewing these materials was to  
10 understand better the allegations and the truth or  
11 falsity of them.

12 Q.   Okay.  Dr. Rubin, at any time up to the present  
13 have you ever enlarged your investigation beyond the  
14 allegations that you've already told me about this  
15 morning --

16           MR. PURDY:  Let me --

17 Q.   -- into any other allegations?

18           MR. PURDY:  Excuse me, counsel.  Let me  
19 just interject for the record I think to the extent  
20 that he can answer that without divulging, and I  
21 don't know whether he had conversations or not, but I  
22 would simply caution Dr. Rubin that to the extent he  
23 had conversations with counsel that asked him to do  
24 something else, then I think you're crossing the  
25 bounds that -- the restriction that has been

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418  1-800-553-1953

1 specifically laid down by counsel for the Plaintiffs,  
2 but that's my objection. I just would caution Dr.  
3 Rubin.

4 Q. I assume, Dr. Rubin, that Mr. Allinder and  
5 perhaps others have fully explained to you the  
6 concept of work product?

7 A. Well I'm not a lawyer. I -- my understanding of  
8 work product is that of a layman in terms of law.

9 Q. But I take it that you've obtained during the  
10 course of your consultancy on this case at least some  
11 understanding of this legal concept of work product;  
12 true?

13 A. The intricacies of the law are very difficult  
14 for a nonlawyer to penetrate, but insofar as I've  
15 been able to, I have an appreciation of what you're  
16 talking about.

17 Q. Now in none of my questions today, or tomorrow  
18 for that matter, am I seeking to have you divulge to  
19 me specifically what Mr. Allinder or any other  
20 attorney representing the tobacco companies has told  
21 you. All right. Is that clear?

22 A. I understand what you're saying.

23 Q. Now, my question was: Did you ever expand the  
24 scope of your research beyond the allegations that  
25 you have already discussed with me this morning?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 A. Well I think I -- I've really answered that, but  
2 let me try to make it clearer. I am prepared to  
3 respond to you as an expert in the area -- in those  
4 areas that relate to the activities of the CTR. I do  
5 not want to profess ignorance of every other aspect  
6 of tobacco litigation. I may have acquired all kinds  
7 of information, including reading the New York Times  
8 and The Wall Street Journal, to say nothing of the  
9 National Enquirer, but in this proceeding that we  
10 have here today my preparation has been to respond to  
11 questions regarding allegations of CTR activities and  
12 the truth or falsity of them.

13 Q. And you've told me about some specific  
14 allegations that you've investigated and now I'd like  
15 to know, have there been any others that you have  
16 undertaken at any time since you were initially  
17 retained up to the present, any other specific  
18 allegations about CTR that you have investigated?

19 MR. ALLINDER: Objection, confusing.

20 A. You know, what I was trying to do was to  
21 generalize the allegations by using global type of  
22 language. I'm not prepared to go into every specific  
23 allegation about every specific item unless --  
24 regarding CTR unless you specifically ask me those  
25 questions.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And once again -- I guess my question still  
2 wasn't quite clear -- I understand that there may be  
3 some subcategories to the general global allegations  
4 that you've told me about this morning and I'm not  
5 attempting to preclude you on those points. What I'd  
6 like to know is are there any other general global  
7 allegations that you've investigated as an expert in  
8 this case?

9 MR. ALLINDER: Objection.

10 A. The short --

11 MR. ALLINDER: Excuse me. Objection.

12 A. The short answer is no. But I -- I want to go  
13 on record as reserving the right to -- to amend that  
14 if your questions bring to mind some other aspects of  
15 the -- these allegations that you -- you may not feel  
16 were included in this global aspect.

17 Q. Did you ever obtain an understanding up to today  
18 as to who Mr. Allinder's clients are?

19 A. Mr. Allinder's clients are tobacco companies.

20 Q. And what were your qualifications as you saw  
21 them to investigate the truth or falsity of  
22 allegations that the CTR was not a legitimate  
23 grant-funding institution?

24 A. My -- I have been in academic medicine for more  
25 than 35 years. During that time I have personally

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 published more than 250 papers, some 7 or 8 books,  
2 probably \$35 to \$40 million in grants from the  
3 National Institutes of Health. I have served on many  
4 review groups that are responsible for funding grants  
5 from the NIH, have served as Editor in Chief of one  
6 of the major biomedical journals in the world for 14  
7 years, have served on editorial boards reviewing  
8 papers for many journals for many years, and have  
9 taught more than a generation of medical students and  
10 graduate students in the biological sciences. If you  
11 give me time, I may come up with some more  
12 qualifications, but those are among the ones that I  
13 would list.

14 Q. During the experience that you have just  
15 outlined for us have you ever personally confronted  
16 any fraud in the conduct of medical research, as you  
17 understood it?

18 A. No.

19 Q. Have you ever, prior to this case, been asked to  
20 investigate whether or not some type of fraud  
21 occurred with respect to the operation of an entity  
22 such as CTR?

23 A. No.

24 Q. Prior to the time that you were retained for  
25 this assignment did you explain to Mr. Allinder that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 you didn't have any direct experience with respect to  
2 fraud in connection with medical research?

3 A. The use of "fraud" here has to be restricted.  
4 Fraud can be used to describe scientific misconduct  
5 that is a situation in which an investigator  
6 fabricates data or falsifies data or plagiarizes  
7 data. That is in one sense considered fraud and  
8 that's scientific misconduct. Another use of the  
9 word "fraud" would be that of an organization which  
10 purports to be one thing and actually acts in a  
11 different and in -- inappropriate manner. So you  
12 have to define for me what -- what do you mean by  
13 "fraud".

14 Q. Do you have any experience in confronting either  
15 type of the frauds that you just explained to me?

16 A. Personally I have not been engaged in  
17 confronting any type of fraud.

18 Q. And have -- prior to this case, have you ever  
19 been asked to investigate either of the two types of  
20 scientific misconduct or fraud that you just  
21 explained to me?

22 A. I have not.

23 Q. And did you explain that to Mr. Allinder before  
24 you accepted this assignment?

25 A. No.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now, as I understand your report, at least one  
2 of the primary focuses of your investigation had to  
3 do with the research that was authorized by the  
4 Scientific Advisory Board of the CTR; is that  
5 correct?

6 A. CTR does not authorize any research. It funds  
7 research.

8 Q. The Scientific Advisory Board authorizes the  
9 research in the sense that it would be asked to  
10 either approve or disapprove funding; is that true,  
11 is that your understanding?

12 MR. PURDY: Object to the form.

13 A. Well that's also not entirely correct. The --  
14 as -- according to my understanding, the Scientific  
15 Advisory Board acts or acted in a fashion similar to  
16 the review committees of the National Institutes of  
17 Health or organizations such as the American Cancer  
18 Society or the American Heart Association. In  
19 evaluating applications it is a general policy to  
20 rate them on some scale. The funding decisions are  
21 then made according to how much money is available to  
22 fund the grants, so that grants are funded in order  
23 of their priority. And when the amount of money  
24 allocated for research is reached, the remaining  
25 grants are not funded.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So your understanding is that with respect to  
2 the CTR, the Scientific Advisory Board had purely an  
3 advisory function?

4 MR. ALLINDER: Objection.

5 A. It's called advisory.

6 Q. And is it your understanding that that was its  
7 main function, to simply advise the management of CTR  
8 with respect to a priority of issuing funding  
9 dollars?

10 MR. PURDY: Object to the form.

11 A. It creates the priority list.

12 Q. And do I understand correctly that a primary  
13 area of your investigation in this case has been to  
14 focus on the projects that were actually funded by  
15 the CTR in terms of the quality and relevance of the  
16 -- of those research projects?

17 A. That was one --

18 Q. One of the primary?

19 A. -- of the -- one of the objectives.

20 Q. What were the others?

21 A. I was interested in the composition of the  
22 Scientific Advisory Board in terms of the  
23 qualifications, reputations and achievements of the  
24 members of the Scientific Advisory Board.

25 Q. And you were satisfied, I take it, based upon

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 your review that the members of that board were by  
2 and large well qualified for those tasks?

3 A. I was surprised that -- how distinguished a  
4 group of investigators the CTR had been able to  
5 persuade to serve on the Scientific Advisory Board.

6 Q. What were the other objectives?

7 A. I was also interested in noting the  
8 investigators who were funded by the CTR.

9 Q. That would come under the heading of quality --  
10 quality and relevance of the research projects;  
11 correct?

12 A. That would not, sir, because a totally unknown  
13 investigator from East Overshoe General Hospital  
14 conceivably might come up with a world-class paper,  
15 so it is not the same issue. The paper published in  
16 a peer-review journal stands on its own regardless of  
17 the location or the reputation of the investigator.

18 Q. So you're saying the qualifications of the  
19 researchers as that might bear upon ultimately --

20 A. Well --

21 Q. -- the quality and relevance of the research?

22 A. -- I think that the quality of the research  
23 program can be judged in part, but only in part, by  
24 the quality, reputation, institutions, et cetera of  
25 the investigators who are funded; in other words, one

1 would ask the question: Have all the grants been  
2 awarded to investigators at inferior institutions who  
3 have no particular scientific reputation? Or have a  
4 substantial number of the projects been -- or the  
5 funds been awarded to investigators who have made  
6 previous contributions to the biomedical literature?  
7 So do you wish for me to continue?

8 Q. No. What other criterion did you apply to your  
9 investigation into these allegations, criteria  
10 objective?

11 A. I was also interested in the institutions to  
12 which grants were awarded. In this respect grant  
13 applications have to be approved by the institution  
14 before they are submitted to any organization for  
15 funding. When the funds are awarded they are awarded  
16 to the institution, not to the individual  
17 investigator. The investigator then has the right to  
18 draw upon those funds from the institution, but they  
19 do not go to the individual's bank account, so that I  
20 was interested to see what types of institutions were  
21 the recipients of these grants.

22 Q. Any other criterion that you --

23 A. Yes. I thought it would also be interesting to  
24 see whether the papers that were published that  
25 acknowledged support from the CTR were written with

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 any other investigators or whether these were all  
2 loan wolves out -- out there seeking money for their  
3 research. And I also was interested to see whether  
4 other sources of funding were acknowledged in the  
5 same paper, because clearly if a paper is supported  
6 by the CTR but is also supported partly by NIH or  
7 American Cancer Society or the government of Sri  
8 Lanka or what have you, that whatever responsibility  
9 for the paper might exist or might be attributing to  
10 the funding agency would be shared by other funding  
11 agencies as well.

12 Q. All right. Any other criteria that you applied  
13 to your investigation?

14 A. I was interested in the type of journals in  
15 which the papers appeared. Were they so-called  
16 peer-reviewed? Were they throwaway journals? Were  
17 they journals of high quality; that is, highly-cited  
18 journals that were generally accepted as frontline  
19 journals. I think that includes the major items that  
20 I looked at, but I -- I would want the right to add  
21 to that if you jog my memory.

22 Q. Would you agree that a number of the criteria  
23 that you just mentioned to me have got to do at least  
24 in a general sense with reaching opinions as to the  
25 quality of the research?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. They're bear upon that, certainly.

2 Q. Now I take it that as you undertook this  
3 investigation, you did not intend to operate as an  
4 advocate for Mr. Allinder's clients?

5 A. Sir, I -- I'm not an advocate. I'm a physician  
6 and a pathologist and an educator and investigator,  
7 but I'm not an advocate.

8 Q. And you didn't accept this assignment from Mr.  
9 Allinder to act in the role of an advocate, did you?

10 A. I did not. When I -- I accepted this  
11 assignment, I told Mr. Allinder that I would  
12 investigate the topic and I would let the chips fall  
13 where they may; that is, if I had doubts about the  
14 authenticity or the quality of the research or the  
15 way in which the data were presented that I would  
16 have to tell him that.

17 Q. And I take it you explained to Mr. Allinder in  
18 one way or another that you did not regard your role  
19 in this case to be one of explaining away any  
20 damaging evidence that you might come across during  
21 the course of your investigation; true?

22 A. I specifically brought that topic up with Mr.  
23 Allinder during our initial meeting, that I would do  
24 as thorough an investigation as I could, and that  
25 whatever conclusions I came to I would share with

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 him.

2 Q. And I take it the conclusions that you expected  
3 to come to or that you ultimately did come to were  
4 related specifically to the allegations that you were  
5 asked to investigate?

6 A. That is correct.

7 Q. Now one of the opinions that you have developed  
8 in this case is that you saw nothing unseemly about  
9 the evolution of the research that was funded by CTR  
10 between its genesis in 1954 up to the present time;  
11 is that a fair statement?

12 A. That's fair.

13 Q. And as I understand your report, it was your  
14 view after reviewing a good deal of -- of literature  
15 that in the early years of CTR it was called the  
16 Tobacco Institute Research Committee at that time?

17 MR. ALLINDER: Objection.

18 MR. PURDY: Objection; that's not accurate.

19 MR. ALLINDER: Industry.

20 Q. I'm sorry. That's correct. Let me just ask the  
21 question again.

22 You understand that when -- that CTR's  
23 predecessor is known as TIRC?

24 A. That's correct.

25 Q. Tobacco Industry Research Committee?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. TIRC.

2 Q. And as I understand, one of the opinions that  
3 you've developed is that the first several years of  
4 research by TIRC had a good deal to do with the  
5 relationship between tobacco use and health?

6 MR. ALLINDER: Objection.

7 Q. Is that true?

8 A. That is correct.

9 Q. And that sometime around 1970 or so that  
10 research evolved into a focus that was primarily upon  
11 the cause and origin of diseases?

12 MR. ALLINDER: Objection.

13 Q. Is that true?

14 A. Partially true, but let me explain. The early  
15 days of the TIRC and its successor, CTR, were  
16 characterized by a focus, as you had correctly  
17 indicated, on the broader issues of tobacco and  
18 health because many of the epidemiologic studies were  
19 actually in the early stage of development or  
20 required confirmation or additions to. There were  
21 many things that were not clear in those terms, and  
22 that was the focus, not only of the TIRC and CTR, but  
23 many other organizations at that time. As these  
24 issues became developed and the data became clearer,  
25 the focus of many institutions, biomedical research

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 in general, began to narrow down to the basic  
2 biologic or pathogenetic mechanisms that were -- that  
3 underlie these diseases. In that respect the CTR was  
4 in the mainstream of American biomedical research and  
5 began to focus on those issues that were relevant to  
6 the molecular and cellular aspects of diseases that  
7 were statistically associated with smoking. These  
8 would include basic studies, lung function and lung  
9 enzymes, basic studies of cancer, how cancer forms,  
10 what is the cellular basis, what are the inciting  
11 factors. There were studies on the basic pharmacal  
12 or physiological effects of nicotine. I could name  
13 more. But in this respect the CTR did change its  
14 focus gradually over the years in the same way that  
15 virtually all biomedical research in the United  
16 States and indeed abroad has changed.

17 Q. Now I take it as a board certified pathologist  
18 that you were keeping yourself generally aware of  
19 this evolutionary development in the research  
20 relating to these diseases as it was occurring in the  
21 50s, 60s, 70s and 80s.

22 A. I think that's fair.

23 Q. And you mentioned that there was a mainstream  
24 biological research and that CTR was a part of that.

25 A. Well the CTR didn't do research itself. The CTR

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 funded research and --

2 Q. But the CTR funded research was a part of --

3 MR. ALLINDER: Excuse me.

4 Q. -- the mainstream?

5 MR. ALLINDER: Were you done with your  
6 answer?

7 THE WITNESS: . Yes.

8 MR. ALLINDER: Okay.

9 Q. Would that be a better way to say it, that the  
10 CTR funded research was a part of this biomedical  
11 mainstream?

12 A. In my opinion that's true.

13 Q. Now as you were reviewing the literature as --  
14 as being issued throughout the course of this  
15 evolution, was the mainstream of this research  
16 basically reporting that the case linking smoking to  
17 lung cancer and these other diseases has now been  
18 established; therefore we should move the focus of  
19 the investigation to the etiology of these diseases?

20 MR. ALLINDER: Objection.

21 A. In general that's true.

22 Q. Have you seen any documents among the vast  
23 number of documents that you've reviewed in this case  
24 that indicated that CTR as an organization agreed  
25 with that assessment that the case linking cigarette

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 use to lung cancer and these other diseases has been  
2 firmly established and that it's now time to re-focus  
3 the investigation?

4 MR. ALLINDER: Objection to the form of the  
5 question.

6 A. Well, from my point of view, the funding  
7 decisions of the CTR or the priority decisions, if  
8 you will, were made by the Scientific Advisory Board,  
9 and the Scientific Advisory Board being made up of a  
10 number of investigators and educators from different  
11 disciplines, different parts of the country,  
12 different institutions, had their own individual  
13 opinions. Now I don't know all of the opinions of  
14 the various members of the SAB at any one time. So  
15 -- and I've never talked to any of those people and  
16 asked them specifically what -- what was or what is  
17 your opinion regarding these issues. What I can tell  
18 you is that the results of their deliberations and  
19 their review decisions were to fund, to support  
20 projects that were in the mainstream of American  
21 research.

22 Q. You understand that the members of the CAB were  
23 not employees of CTR; true?

24 MR. ALLINDER: Excuse me?

25 A. The CAB is the Civil Aeronautics Board, isn't

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 it?

2 Q. I'm sorry. I'm getting my acronyms confused.

3 Let me try that question again. You understand that  
4 the members of CAB were not employees--

5 MR. ALLINDER: Did it again.

6 MR. PURDY: SAB.

7 Q. The members of the SAB. Let me start all over.

8 You understand that the members of the SAB were  
9 not employees of CTR?

10 A. They were not, and in this respect the SAB  
11 functioned in a manner similar to that of the other  
12 review committees. For instance, when I have served  
13 on the NIH study sections, a colloquial term, called  
14 the initial review groups, I was not an employee of  
15 the federal government. The people who serve on the  
16 review committee of the American Cancer Society are  
17 not employees of the American Cancer Society. These  
18 are more voluntary and actually pro bono type of  
19 work. The compensation or honorarium would be  
20 considered a tip. It's not real payment for  
21 consultation.

22 Q. But you understand that the American Cancer  
23 Society does in fact have some employees on its  
24 payroll?

25 A. I don't know anything about it, but I would

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 assume they have secretaries and --

2 Q. Administrator?

3 A. -- executives, administrators, yes.

4 Q. And you've seen statements issued on behalf of  
5 the American Cancer Society; true?

6 MR. ALLINDER: Objection.

7 A. In the newspapers.

8 Q. And it is not unusual for any number of  
9 organizations that fund research to issue statements  
10 in the name of the organization concerning the  
11 research that they funded; true?

12 A. That's reasonable.

13 Q. And with respect to the CTR and its predecessor,  
14 the TIRC, you understand that those organizations had  
15 paid employees?

16 A. They did.

17 Q. And the paid employees included not only  
18 secretaries and clerical personnel, but  
19 administrative and management personnel?

20 A. I'm not familiar with the administrative  
21 structure other than the scientific director being a  
22 full-time paid employee --

23 Q. So there --

24 A. -- of the CTR.

25 Q. The scientific director was also a member of the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 SAB; correct?

2 A. That's correct.

3 Q. So there was at least one member of the SAB who  
4 was an employee of CTR and was receiving some type of  
5 annual compensation?

6 A. That's -- that's what I understand.

7 Q. And are you indicating that you weren't aware  
8 that other than the scientific director that the CTR  
9 also employed some executive officers?

10 A. I think there is a president of the CTR.

11 Q. And is it your understanding that prior to Mr.  
12 -- prior to Dr. Glenn holding that position, that  
13 that position has always been held by a retired  
14 tobacco company executive?

15 MR. ALLINDER: Objection.

16 A. I don't recall exactly, but I am not going to  
17 contest that.

18 Q. And is it your understanding that CTR has a  
19 board of directors?

20 A. It has, but I -- I can't say that I am  
21 intimately acquainted with that topic.

22 Q. During the course of your investigation have you  
23 become aware to any extent of the composition of the  
24 board of directors of CTR over any period of time?

25 A. No.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Were you aware of the fact that representatives  
2 of the tobacco industry comprised the board of  
3 directors of T -- TIRC and then CTR?

4 MR. ALLINDER: Objection.

5 A. I know they participated in some way, but I -- I  
6 don't know the precise details.

7 Q. Did you know that TIRC and then CTR are actually  
8 owned by tobacco companies?

9 A. Well, I don't know the legal aspects of it. I  
10 know that they are supported as an activity of these  
11 companies, but I'm not a lawyer or an accountant.

12 Q. But you're familiar, I take it, with the concept  
13 of corporations and how corporations are owned by  
14 shareholders?

15 A. Yes.

16 Q. You may have even purchased some stock in a  
17 corporation somewhere along the line yourself; true?

18 A. That is true.

19 Q. And is it your understanding or are you aware of  
20 the fact that the shareholders who own CTR are  
21 tobacco companies?

22 A. Yeah, I believe that's true.

23 Q. Now going back to -- to my original question on  
24 this topic, are you aware of any document issued by  
25 CTR as an organization in which CTR acknowledged that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 it was changing the focus of its research because  
2 that the case linking tobacco use to lung cancer and  
3 other diseases had been firmly established?

4 MR. ALLINDER: Objection.

5 A. I'm not aware of a document that says that.

6 Q. So if CTR-funded research followed the  
7 evolutionary mainstream that you described, it was  
8 without the type of acknowledgment that you  
9 understood other members of that mainstream made with  
10 respect to the link between tobacco use and lung  
11 cancer and other diseases?

12 MR. ALLINDER: Objection.

13 MR. PURDY: Objection.

14 MR. ALLINDER: Misstates his testimony.

15 Q. Isn't that true?

16 MR. PURDY: Objection. Object to the  
17 form.

18 A. I -- you'll have to read something back to me.  
19 I don't remember saying that American Cancer Society  
20 or American Heart Association published documents  
21 saying that they were changing the focus of their  
22 research. In fact just as Darwinian evolution was  
23 gradual, although, as I'm sure you know, there are  
24 arguments about that, some people claim punctuated  
25 equilibrium and that is jumps and starts, but that's

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 beside the point, this was not a -- to my way of  
2 thinking on the part of the CTR or the NIH or other  
3 organizations a conscious decision taken at one  
4 moment to change the direction of research. As  
5 research priorities have changed because of changes  
6 in technology and changes in epidemiologic findings,  
7 changes in our accumulation of data and our general  
8 knowledge of the topics, research will change  
9 according to those alterations in the state of the  
10 art, if you will. So I do not view this as a  
11 conscious decision either on the part of the CTR or  
12 other voluntary organizations or government funding  
13 organizations to change the direction, but that's  
14 what's happened, and it's happened to my own  
15 research.

16 Q. Dr. Rubin, do you recall telling me a few  
17 minutes ago that as you were reviewing the literature  
18 yourself as a pathologist, you came to the  
19 understanding that the focus of the research was  
20 changing in the 70s because the case against tobacco  
21 use had been firmly established, or words to that  
22 effect?

23 MR. ALLINDER: Objection.

24 A. You'll have to read back to me where I said  
25 that. I -- I don't -- I don't recall putting it in

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 those words.

2 Q. Well the record --

3 A. Let me try to help you.

4 Q. Yeah. And basically what I'd like to know is do

5 you recall words to that effect?

6 A. I don't recall words to the effect of what you

7 are saying, but let me rephrase what I said and

8 perhaps I can satisfy you. The accumulating data

9 relating tobacco use to certain diseases became

10 sufficiently substantial, large, persuasive, that a

11 consensus developed in the biomedical community that

12 a statistical relationship did indeed exist between

13 smoking, cancer of the lung, emphysema, chronic

14 bronchitis, heart disease, and so on. Once that

15 consensus had developed, and I say consensus because

16 it wasn't by any means unanimous, there were many

17 legitimate physicians or investigators who had

18 contested that point of view, but there was a general

19 consensus, and among those who followed this

20 consensus the way to approach these problems was not

21 by doing more studies that would confirm previous

22 studies or that would rehash old data but to embark

23 on -- in new directions and try to determine the

24 biological basis for the association that had been

25 observed epidemiologically. Now does that make it

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 clear?

2 Q. Well, this consensus that you're referring to,  
3 it was sufficient to have convinced you of the  
4 relationship between tobacco use and lung cancer and  
5 other diseases by the early 60s; true?

6 MR. ALLINDER: Objection.

7 A. You know, it's hard to recall exactly what your  
8 own impressions were at any one time. In the early  
9 60s I would say that I was persuaded that smoking  
10 causes lung cancer, and I thought that likely  
11 influenced the development of emphysema. I don't  
12 think I had any particular opinions regarding smoking  
13 and heart disease at that time or smoking and some of  
14 the other malignant conditions that are associated  
15 with the use of tobacco.

16 Q. When did you develop the opinion that smoking  
17 causes cardiovascular disease?

18 MR. ALLINDER: Objection.

19 A. I would say some time in the 1970s probably.

20 Q. Not until the 1970s?

21 A. Well it's been my impression that coronary  
22 artery disease is a very complex matter; it involves  
23 diet, it involves clotting factors, it involves  
24 platelets, it involves vessel walls, it involves  
25 life-style perhaps, the use of drugs such as aspirin

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 and alcohol, geographic and racial differences. I  
2 think it was a little more difficult to tease out the  
3 relationship to tobacco in that area than lung  
4 cancer.

5 Q. Doctor, recognizing that there may be a number  
6 of contributing factors to cardiovascular disease,  
7 when did you arrive at the opinion that smoking  
8 played a substantial part in contributing to  
9 cardiovascular disease?

10 MR. PURDY: Object to the form.

11 A. Well with -- with the understanding that  
12 coronary artery disease is not -- was not the  
13 principal focus of my intellectual activities, I  
14 think that the case had become strong enough by the  
15 mid 70s or thereabouts for me to be persuaded that  
16 the statistical association was real and that smoking  
17 was a contributor to coronary artery disease.

18 Q. When did you arrive at the opinion that  
19 cigarette smoking played a substantial part as a  
20 contributing factor in the development of laryngeal  
21 cancer?

22 MR. PURDY: Object to the form.

23 A. I'd say in the 60s.

24 Q. And with respect to all of the opinions that you  
25 have just told me about that you had developed on

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 those subjects of smoking and health risks, your  
2 opinions had been developed solely by reading the  
3 literature; true, the published literature?

4 A. I think that's fair.

5 Q. And it was while reading and keeping up with the  
6 published literature that you became aware that in  
7 the early 70s there was a re-focusing of the research  
8 toward the etiology of disease as opposed to tobacco  
9 use as a health risk?

10 MR. ALLINDER: Objection.

11 A. At that time I was not aware what the CTR was  
12 doing.

13 Q. My question went to your own understanding of  
14 where the research was going. I think you told me  
15 that as you reviewed the published research, by the  
16 70s you understood that the research was moving on to  
17 the etiology of disease because the case establishing  
18 the link between smoking and lung cancer and other  
19 diseases had already been established.

20 MR. ALLINDER: Objection.

21 Q. True?

22 A. The answer is yes, but. And the "but" is that  
23 when you say "established," as far as I'm concerned,  
24 it was established, but established in this -- in  
25 this sense means to me --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. I understand.

2 A. -- a consensus. There was a general, majority  
3 opinion that A, B, C were true, but when you say  
4 established, it's not established in the sense that  
5 the earth revolves around the sun.

6 Q. But established at least to your satisfaction,  
7 that's what you're trying to say?

8 A. To my satisfaction.

9 Q. Fine. And I take it that you understood that  
10 you weren't the only physician in the country who  
11 thought that it had been established to that  
12 individual satisfaction?

13 A. No, I -- I think that the majority of physicians  
14 and investigators had that opinion.

15 Q. And a number of the investigators had been  
16 funded by various funding organizations?

17 A. That's true.

18 Q. And a number of the funding organizations for  
19 the investigators felt that the link had been  
20 established to the satisfaction of those  
21 organizations; true?

22 A. When you say the "organizations" --

23 Q. The funding organizations.

24 A. -- the funding organizations fund research based  
25 upon the decisions of their consultants who form

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 these advisory or review committees, so you -- you  
2 can't say that -- shall I -- let's take the National  
3 Cancer Institute made the funding decision because  
4 the National Cancer Institute thought one thing or  
5 another. The members of the review committees  
6 establish priorities to fund grants based upon their  
7 individual assessment of the relevance, the novelty,  
8 the accuracy of the methodology and so on of the  
9 grant. There's another factor that enters into  
10 this. Any review committee, such as the SAB, but  
11 certainly not restricted to it, deals only with the  
12 applications that they receive, and if these  
13 applications change, the nature of the grants that  
14 are funded will also change, so that as investigators  
15 in general change their focus because of develop --  
16 larger developments in biomedical research, the  
17 nature of the applications to any funding agency will  
18 change without any change in that agency. It's  
19 because the investigators in different parts of the  
20 country, Massachusetts, and New York, and California,  
21 come to the conclusion that the way to attack this  
22 problem is through basic research or statistical or  
23 epidemiology or what have you. So the SAB, similar  
24 to review groups of the NIH and American Heart and  
25 American Cancer Society, deal with the applications

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that they get and assign priorities. This change in  
2 the nature of the research is not determined by  
3 either the CTR or the Scientific Advisory Board. It  
4 is a function of the overall change in the direction  
5 of biomedical research in the country and in the  
6 universities and medical schools.

7 Q. Dr. Rubin, my question is a more narrow one.  
8 It's your understanding; is it not, that the  
9 management of funding organizations attempt to stay  
10 generally aware of the research projects that are  
11 developed with their money?

12 MR. ALLINDER: Objection.

13 A. I've never been in that situation personally. I  
14 -- I've only been at the other end of the review  
15 groups.

16 Q. Well, for instance, the American Cancer Society  
17 or the National Cancer Institute, those organizations  
18 have some type of executive management; do they not,  
19 as far as you understand?

20 A. As far as I understand they do.

21 Q. And they have some time of board of trustees or  
22 board of directors that would be establishing policy  
23 for the organization?

24 A. You'll have to tell me what you mean by policy.

25 Q. In the same fashion that a board of directors of

1 any company establishes some policies, objectives,  
2 for the company to pursue?

3 A. Well I think you -- you've got it wrong. I  
4 think -- I think you are confusing the goals and  
5 objectives of profit-making corporations and the  
6 goals of research-funding agencies.

7 Q. Let's limit it to nonprofit --

8 A. Its not the same thing.

9 Q. Let's limit it to nonprofit corporations, such  
10 as the American Cancer Institute. Would you expect  
11 --

12 A. I'm not familiar with that organization; --

13 Q. Simply based upon your experience as a  
14 physician.

15 A. -- American Cancer Institute?

16 Q. Society, American Cancer Society. Would you  
17 imagine that the employees, the management employees  
18 of that organization tended to keep abreast of the  
19 research findings that are made with their dollars?

20 MR. PURDY: Object to the form.

21 A. I don't have any personal knowledge of what the  
22 directors of the American Cancer Society do. It  
23 probably would be inappropriate for me to comment on  
24 something on which I'm totally not aware.

25 Q. Would you have expected, since you now have some

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 awareness of CTR, that its management would have kept  
2 itself aware at least to some degree of the results  
3 of the research that it was funding?

4 MR. PURDY: Objection, argumentative.

5 A. Well I wouldn't be surprised if they did, but  
6 that's not part of my charge.

7 Q. I understand that. But you would be highly  
8 surprised if an organization that was funding  
9 research took utterly no interest in the outcome of  
10 the research; would you not?

11 MR. ALLINDER: Objection.

12 A. Well, you have many words there that are really  
13 imprecise, and to answer your question in the global  
14 sense might not really be appropriate, but let me  
15 explain. The --

16 Q. Let me just --

17 A. The board of.

18 Q. -- withdraw that question then and ask another  
19 one.

20 A. Okay. Would you excuse me for a moment?

21 MR. PURDY: We need a break.

22 MR. ALLINDER: Oh, I'm sorry.

23 (Recess from 9:51 to 9:59 a.m.)

24 BY MR. GILL:

25 Q. Now as I understand it, Dr. Rubin, in

1 investigating the published research results of the  
2 CTR grant program, you found a number of those  
3 projects that implicated smoking as a cause of  
4 disease; is that correct?

5 MR. ALLINDER: Objection.

6 A. That is correct.

7 Q. And if the management of CTR was reviewing the  
8 work of their grant investigators, then presumably  
9 the management of CTR would have been aware of those  
10 findings; true?

11 A. The findings are reported every year in the  
12 annual reports and are a matter of public record.

13 Q. And in fact the annual report is a synopsis of  
14 the findings of the research projects, in part; is it  
15 not?

16 A. That is correct.

17 Q. Presumably in order to prepare a synopsis  
18 somebody has to read the report.

19 MR. ALLINDER: Objection.

20 Q. True?

21 A. I don't recall whether the information contained  
22 relating to each paper was derived strictly from the  
23 abstract published with the paper or whether it  
24 represented a further abstraction; I don't recall  
25 that.

1 Q. Or whether the summary represented a synopsis of  
2 the full report based upon the review of the author  
3 of the summary?

4 MR. ALLINDER: Objection.

5 A. Let me explain. The format of papers in the  
6 biomedical literature usually includes an abstract of  
7 the paper at the beginning. That's the way it's  
8 published in the journal. I don't really recall  
9 whether the summary that is included in the annual  
10 reports simply is that abstract or whether it  
11 represents some further abstraction or modification;  
12 I just don't recall that.

13 Q. Is it your understanding that the annual reports  
14 of CTR and its predecessor were prepared by the staff  
15 of CTR?

16 A. I -- I never went into that topic.

17 Q. You wouldn't expect the members of the  
18 Scientific Advisory Board to create the annual report  
19 of the organization, would you?

20 A. I don't believe they would, no.

21 Q. Nor would you expect the members of the  
22 Scientific Advisory Board to prepare a synopsis or  
23 summary of the research projects that were undertaken  
24 that year?

25 A. I don't believe that's their function.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. And if -- if -- if they don't do it, that would  
2 basically leave employees of CTR to do it?

3 A. I would expect that.

4 Q. And you would expect management of CTR to be  
5 generally aware of the research reports that have  
6 been summarized in their annual report?

7 MR. ALLINDER: Objection.

8 A. Well, to tell you the truth, I am not aware of  
9 the sophistication of the lay members of the CTR  
10 administrators who were not physicians or scientists,  
11 so I don't really have any personal information as to  
12 how much they understood of the nature of the data or  
13 the results of these investigations. It's not  
14 something that I know enough to comment upon.

15 Q. How about the scientific director of the SAB of  
16 the CTR, would you expect that that individual would  
17 have sufficient qualifications to review the  
18 summaries of the grants in the annual report and  
19 understand what he's reading?

20 A. I would think so.

21 Q. And would you expect that the scientific  
22 director of the SAB would have reviewed the research  
23 reports that were generated with CTR funding?

24 A. I would assume. Again it's not an area that I  
25 have any particular knowledge. I have not

1 interviewed the scientific directors, but it doesn't  
2 seem unreasonable what you're saying.

3 Q. And if the scientific directors of the CTR had  
4 reviewed the research reports that were funded by  
5 CTR, they would have come across some of the same  
6 studies that you did that implicated smoking with  
7 cancer and other diseases; true?

8 A. That's true.

9 Q. Now are you aware of any of the various doctors  
10 that have served as scientific director of the SAB  
11 ever acknowledging that smoking was a cause or one of  
12 the contributing causes to lung cancer or any other  
13 disease?

14 A. Again, you get to the semantics of "cause". It  
15 is my understanding that the president or current  
16 president or scientific directors have long  
17 acknowledged that epidemiologic data have established  
18 that cigarette smokers are at substantially greater  
19 risk of developing various diseases, including lung  
20 cancer. Their posture has been I believe this: That  
21 epidemiologic associations or statistical links do  
22 not establish causation, and that causation requires  
23 experimental data or proof. So it becomes a semantic  
24 problem. In one -- in one sense they are correct.  
25 That epidemiologic data provide associations; that's

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the nature of the beast. Some people would say that  
2 the strength of these associations and a number of  
3 other factors; biological, plausibility, coherence,  
4 uniformity, et cetera, et cetera, criteria, when all  
5 of these are sufficiently established can be  
6 considered to indicate a cause and effect  
7 relationship. Other people who are equally sincere  
8 would say that that always remains an association and  
9 that causation is then established by physical actual  
10 demonstration in experimental animals. He pays you  
11 money and he takes your choice.

12 Q. Well. Doctor you assume that others maybe  
13 equally sincere, but naturally you have no way of  
14 knowing whether or not they're actually sincere, do  
15 you?

16 MR. ALLINDER: Objection.

17 MR. PURDY: Yeah, objection.

18 A. I am not Sigmund Freud. I do not deal with  
19 motivation and sincerity. I assume in general that  
20 the people that I deal with are sincere, and I would  
21 maintain that posture unless presented with evidence  
22 to the contrary.

23 Q. Now you've told me that you understand that  
24 various scientific directors of the SAB at CTR have  
25 acknowledged the existence of epidemiological studies

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that have implicated smoking with lung cancer and  
2 other diseases; correct?

3 MR. PURDY: Let me just object to the  
4 form. I didn't mean to interrupt, Doctor.

5 Q. Now aside from acknowledging that those studies  
6 are out there, do you know of any scientific director  
7 of the SAB at CTR that has ever on behalf of CTR  
8 acknowledged the credibility of those epidemiological  
9 reports as satisfying the organization that the link  
10 between smoking and cancer and other diseases has  
11 been satisfactorily established?

12 MR. PURDY: Object to the form.

13 MR. ALLINDER: Objection, asked and  
14 answered.

15 THE WITNESS: Instruct me. Am I supposed  
16 to answer?

17 MR. PURDY: Oh, yes.

18 MR. ALLINDER: Yes, absolutely.

19 MR. GILL: Yes. Oh, yeah, you are, Doctor.

20 MR. ALLINDER: Do you understand the  
21 question? Answer the question.

22 A. Well it was a long question, a lot of  
23 subordinating clauses. I've had the occasion to read  
24 depositions of Dr. Glenn, who is president of the SAB  
25 who unquestionably acknowledges the greater risk of

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 lung cancer among smokers. I think he considers  
2 smoking a risk factor for lung cancer, or perhaps the  
3 major risk factor for lung cancer. I've read  
4 depositions of Dr. McAllister who has the same  
5 opinion. I think Dr. McAllister is scientific  
6 director or something like that. I believe I have  
7 come across information that indicate to me that  
8 previous scientific directors have also acknowledged  
9 the strength of these associations. What they have  
10 done is categorized smoking as a risk, as a  
11 demonstrated risk factor, but have insisted that  
12 causation be proved by experimental means.

13 Q. Do any specific documents come to your mind in  
14 connection with that last statement?

15 A. As I said, I've reviewed dep -- depositions that  
16 I have read indicate that to me in -- in unequivocal  
17 terms.

18 Q. Do you know whether the Glenn and McAllister  
19 depositions to which you just referred have been made  
20 publicly available.

21 A. I have no knowledge of this.

22 Q. Now assuming that those deposition transcripts  
23 may be under seal and have not been made publicly  
24 available by the tobacco companies or CTR, do you  
25 know of any other public statements that either Dr.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Glenn or Dr. McAllister have made that acknowledge  
2 the cause and effect relationship between tobacco  
3 smoking and cancer?

4 MR. ALLINDER: Objection to the form.

5 A. Well to tell you the truth, I -- I have not  
6 followed their public statements, and I'm not  
7 qualified to answer that question.

8 Q. During the course of your investigation in this  
9 case how did you gain access to the documents that  
10 you reviewed?

11 A. When you say "documents," all the documents that  
12 I have reviewed?

13 Q. Yes. Where did they come from? How did you  
14 obtain access to them?

15 A. In my initial meetings with Mr. Allinder he  
16 asked me to identify materials that I thought I would  
17 need for my analysis.

18 Q. And he then provided you with documents that as  
19 far as you could tell met the descriptions that you  
20 had given him?

21 A. Well I gave him certain specific items such as  
22 annual reports and other data, other materials, and I  
23 also requested that as material became available that  
24 would either give me new information or different  
25 information bearing on the CTR or that might provide

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 me with some greater feeling for the environment or  
2 ambience in -- surrounding these events, that he make  
3 me aware of these, and so that the information has  
4 come from his office at my request.

5 Q. And I take it the documents that you were  
6 requesting were those documents that you felt might  
7 fall within the ambit of investigating the allegation  
8 that CTR was not a legitimate funding organization?

9 A. That's fair.

10 Q. Now, and I take it that beyond what you've  
11 requested of Mr. Allinder he at some point made some  
12 additional documents available to you that met your  
13 general request for updates or supplementation?

14 A. That's correct.

15 Q. Did you ask to see any of the press releases  
16 that TIRC and CTR have issued to the -- to the public  
17 since 1954?

18 A. No.

19 Q. To this day have you reviewed any of those  
20 organizations' press releases?

21 A. Yes.

22 Q. How did you happen to review them?

23 A. Mr. Allinder and his staff were in possession of  
24 a list of documents that were provided by the  
25 Plaintiffs' counsel in Minnesota for the purpose of

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 this deposition. Those documents were then made  
2 available to me.

3 Q. And some of those documents included press  
4 releases?

5 A. Yes.

6 Q. I take it you reviewed them?

7 A. I reviewed them, yes.

8 Q. Did your review of those -- Now the opinions  
9 that you've reached in this case as contained in your  
10 report were all reached prior to the time that you  
11 saw any of those press releases; true?

12 A. That's correct.

13 MR. ALLINDER: Objection to the form.

14 Q. Did the review of the press releases change any  
15 of your opinions?

16 A. Not at all.

17 Q. Have any of your opinions changed since the time  
18 that you wrote your Expert Report in the Minnesota  
19 case?

20 A. No.

21 Q. And there are no supplementary opinions that  
22 you've reached as of this time at least that I could  
23 not find if I reviewed carefully your Expert Report  
24 in the Minnesota case; is that correct?

25 A. That's correct.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. Did you notice that a number of the press  
2 releases issued by TR -- TIRC quoted Dr. Clarence  
3 Cook who was the scientific director of the SAB  
4 between 1954 and 1971 or 72?

5 MR. ALLINDER: Objection.

6 A. Are you referring to Dr. Little?

7 Q. I'm sorry. Dr. Clarence Cook Little I believe  
8 is his name. Yes, I am.

9 A. Yes.

10 Q. In the press releases issued by the TIRC quoting  
11 Dr. Little, he doesn't acknowledge any relationship  
12 between tobacco use and cancer or other disease, does  
13 he?

14 MR. ALLINDER: Object to the form.

15 MR. PURDY: Further object that the  
16 documents speak for themselves. Go ahead, Doctor.  
17 I'm sorry.

18 A. The truth of the matter is I have not spent a  
19 lot of time examining those documents. I have seen  
20 press releases as part of the material that was made  
21 available to me to the effect that Dr. Little did not  
22 acknowledge a link or did not accept a link between  
23 smoking as a cause of lung cancer.

24 Q. He didn't do either, did he; he neither  
25 acknowledged nor accepted such a link; correct?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. ALLINDER: Object to the form.

2 A. You'll have to give me the release you're  
3 talking about because I think that Dr. Little  
4 acknowledged that there was a controversy, meaning  
5 that there was information out there to the effect  
6 that smokers were at risk for lung cancer, but that  
7 he did not accept it as proved.

8 Q. Or valid?

9 A. Well proved or valid would be the same thing.

10 Q. Now Dr. Cook -- Dr. Little -- excuse me -- Dr.  
11 Little served in this capacity during the very years  
12 where you found a number of research publications  
13 that had been funded by CTR that you felt established  
14 the link.

15 MR. ALLINDER: Object to the form.

16 Q. True?

17 A. Well, I don't think that the epidemiologic link  
18 between smoking and cancer depended on work by CTR.  
19 I think it was actually principally the work of other  
20 investigators in -- in the field.

21 Q. So the work --

22 A. There --

23 Q. -- done by CTR --

24 MR. ALLINDER: Excuse me. Have you  
25 finished?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 THE WITNESS: Yes.

2 Q. So the work done by CTR investigators with  
3 regard to establishing the link between smoking and  
4 cancer was actually only a very small part of the  
5 overall work that did so; --

6 MR. ALLINDER: Object to the form.

7 Q. -- is that what you're saying?

8 MR. ALLINDER: Same objection.

9 A. The work of CTR in the entire field of smoking  
10 and health has been only a small part at all times of  
11 the world effort in investigating tobacco and  
12 health. The amount of money provided by CTR I  
13 believe has been dwarfed by money coming from the  
14 National Cancer Institute, American Cancer Society,  
15 and et cetera, et cetera. So in that sense the work  
16 on the epidemiology of cancer and smoking supported  
17 by CTR is a very small part of the total effort.

18 Q. So it's your understanding that the research  
19 into the relationship between tobacco use and cancer  
20 has been supported far more vastly by the public than  
21 by the tobacco companies; true, through CTR?

22 MR. ALLINDER: Object to the form.

23 MR. PURDY: Object to the form.

24 A. Well I don't know. When you say "public," by  
25 other agencies or by other institutions, yes, I think

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that --

2 Q. And those would be publicly; supported, would  
3 they not?

4 A. Well --

5 MR. PURDY: Object to the form.

6 A. I don't have any problems with calling it  
7 publicly supported. I mean the -- the first -- you  
8 know, the first major study that achieved at the time  
9 worldwide publicity, and justifiably so, was not from  
10 the United States, it was from England, it was Doll  
11 and Hill, I think, so, you know, the United States is  
12 not alone in studying these issues.

13 Q. But accepting your characterization that the  
14 research work done through the CTR or funded by the  
15 CTR was only a very small piece of the overall pie,  
16 nevertheless, within that piece you found a number of  
17 research reports that as far as you could tell  
18 strengthened the case that cigarette use caused  
19 cancer and other diseases.

20 MR. ALLINDER: Object to the form.

21 Q. True?

22 MR. ALLINDER: Same objection.

23 A. I think it's true.

24 Q. And if Dr. Little, as the scientific director --  
25 let me strike that question.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1           And the reports that you reviewed in order to  
2 reach that opinion were research reports that were  
3 generated before 1970; correct, by and large?

4           MR. ALLINDER: Object to the form.

5 A.    I don't recall the exact dates, but I think  
6 before 1970 there was a -- a substantial body of work  
7 that had been done by CTR-funded investigators in  
8 these areas.

9 Q.    And if Dr. Cook as the scientific director of  
10 the SAB had reviewed those research reports, he would  
11 have had the same information that you gained by  
12 reviewing; correct?

13 A.    He would have had the same information.

14 Q.    Have you ever seen any public statement by Dr.  
15 Cook --

16           MR. ALLINDER: Excuse me, it's Little.

17           MR. GILL: I'm sorry.

18           MR. ALLINDER: That's all right. Just keep  
19 the record clear.

20           MR. GILL: Thank you.

21 Q.    Have you ever seen any public statement by Dr.  
22 Little acknowledging the findings of those reports?

23 A.    The only public statements of Dr. Little that  
24 I've had access to are those that were presented to  
25 me in the context of this deposition. So I'm not

1 aware of the entire universe of Dr. Little's public  
2 posture.

3 Q. You didn't ask Mr. Allinder to supply you with  
4 any documents that would shed any light on that  
5 particular matter?

6 MR. ALLINDER: Object to the form.

7 Q. True?

8 MR. ALLINDER: Same objection.

9 A. No, I did not.

10 Q. And with respect to the press release documents  
11 that you reviewed relative to preparing for this  
12 deposition as designated by the State of Minnesota,  
13 you didn't find anything in those press releases in  
14 which Dr. Little acknowledged the findings of those  
15 reports implicating smoking with cancer?

16 MR. ALLINDER: Object to the form.

17 Q. True?

18 A. That is true.

19 Q. Now the research reports that you reviewed  
20 certainly would have been available to members of the  
21 scientific community once they were published; true?

22 A. They're in the public domain.

23 Q. And in terms of your experience with the scope  
24 of review that scientific documents generally get,  
25 would you agree with me that the audience for reading

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 and understanding scientific research studies is a  
2 relatively narrow one?

3 MR. ALLINDER: Excuse me.

4 MR. PURDY: Object to the form.

5 MR. ALLINDER: May I listen to the  
6 question?

7 (The record was read by the reporter.)

8 A. That's a hard question to answer. "Narrow" is a  
9 relative term. I -- you can speak of a small  
10 molecule or a small star. In the --

11 Q. Let me try to help.

12 A. -- biomedical community there is a broad  
13 audience; compared to the audience of Playboy  
14 magazine it may be a narrow one.

15 Q. So there's a broad audience in the biomedical  
16 community for reading and understanding research  
17 studies?

18 A. That's correct.

19 Q. Now the biomedical community would be only a  
20 small segment of the public at large; true?

21 A. That's a reasonable statement.

22 Q. And you wouldn't -- perhaps the most well-known  
23 medical journal would be the New England Journal of  
24 Medicine, if not most well-known, one of the most  
25 well-known?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. One of the most well-known, yes.

2 Q. You wouldn't expect that the circulation of the  
3 New England Journal of Medicine would be as broad as  
4 that of the New York Times?

5 A. Well it's the same order of magnitude. It's I  
6 think over 200,000 for the New England Journal, New  
7 York Times is about a million or so, so it's the same  
8 order of magnitude.

9 Q. How about, is the New York Times -- you -- did  
10 you grow up in New York?

11 A. Well I happen to have been born there but I was  
12 snatched away at the age of six months and --

13 Q. Did you grow up in Phil -- in Pennsylvania?

14 A. I grew up in Atlantic City, but before the  
15 advantages of gambling.

16 Q. Did you read New York daily newspapers growing  
17 up in Atlantic City?

18 A. I was a precocious child. I read both  
19 Philadelphia and New York newspapers.

20 Q. You wouldn't expect that the general public  
21 would be as aware of what's published in the New  
22 England Journal of Medicine as the general public  
23 would be of what's published in their -- in urban  
24 newspapers, --

25 MR. ALLINDER: Object to --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. -- would you?

2 MR. ALLINDER: Object to the form.

3 A. Well the major papers of the New England Journal  
4 of Medicine are generally published in the lay  
5 press. I've published personally quite a few times  
6 in the New England Journal of Medicine and I can tell  
7 you I always give interviews to reporters after the  
8 so-called embargo date has been reached so that the  
9 major papers in JAMA, J-A-M-A, New England Journal,  
10 make -- do make their way to the public press.

11 Q. At least from time to time?

12 A. Yes.

13 Q. That wouldn't be true of -- of the vast majority  
14 of medical journals, would it?

15 MR. ALLINDER: Object to the form.

16 A. It would not be true.

17 Q. And certainly the -- when, if we attempted to  
18 add up the circulations of say the largest 400  
19 newspapers in the country, that would dwarf the  
20 circulation of the New England Journal of Medicine or  
21 any of these other medical journal publications;  
22 true?

23 MR. ALLINDER: Object to the form.

24 A. Well you're -- you're asking me subjects of  
25 general knowledge, not any particular expert

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 knowledge on my part.

2 Q. I agree.

3 A. But it would seem to me reasonable to assume  
4 that you're correct.

5 Q. Now a press release when that's issued is  
6 intended to have as wide a scope of coverage as  
7 possible?

8 MR. ALLINDER: Object.

9 Q. That would generally be true; would it not?

10 MR. ALLINDER: Object to the form.

11 A. I don't think I can comment on public relations;  
12 it's not my area.

13 Q. You have no expertise at all, don't claim to  
14 have any expertise at all with respect to the  
15 workings of public relations?

16 A. No. I don't know anything about it.

17 Q. Did you understand that when TIRC in the days of  
18 Dr. Little issued a press release that those press  
19 releases were being picked up, at least to some  
20 extent, in major metropolitan newspapers around the  
21 country?

22 MR. ALLINDER: Object to the form.

23 A. I wouldn't be surprised if they were, but I  
24 don't have any personal knowledge.

25 Q. Did the press releases that you reviewed in

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 connection with this deposition state positions on  
2 behalf of TIRC and later CTR relative to the issue of  
3 smoking and health?

4 A. You'll have to show me the release.

5 Q. We'll probably get to that at some point, but  
6 I'm just wondering based upon your -- your -- the  
7 extent to which you reviewed those press releases, do  
8 you recall one way or the other whether such  
9 positions were included?

10 A. I -- I'd prefer to see it and not make some  
11 statement that I'll have to deny later on.

12 Q. All right. Would it be fair to say you just  
13 wouldn't be sure about that until you had another  
14 chance to look at the press releases themselves?

15 A. That's correct.

16 Q. And I -- I think you told me, Dr. Rubin, that  
17 your review of the press releases was relatively  
18 cursory?

19 A. Yes.

20 Q. Now one of the opinions that I believe you  
21 formed and have expressed in your Expert Report is  
22 that you didn't find any evidence of suppression of  
23 publication of research results by CTR?

24 MR. ALLINDER: Object to the form.

25 Q. Is that a fair way to put it?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's fair.

2 Q. And your criterion for investigating whether or  
3 not suppression had occurred was based upon reviewing  
4 the -- the studies that were actually published?

5 MR. ALLINDER: Object to the form.

6 A. There have been more than 6000 papers published  
7 that have acknowledged funding by CTR. I do not want  
8 to give you the impression that I have carefully read  
9 6000 or more papers, but based on my review of a  
10 large number of these papers, the journals in which  
11 they appear, the coworkers, the other funding, did  
12 not appear to me that there had been any suppression  
13 at all.

14 Q. Did you talk to or contact any of the grantees  
15 or authors of these studies?

16 A. No.

17 Q. Did you contact any current or former employee  
18 of CTR in connection with that investigation?

19 A. No.

20 Q. Did you contact any current -- any former  
21 employee of TIRC in connection with that  
22 investigation?

23 A. No.

24 Q. Other than determining that there were over 6000  
25 studies published that acknowledged some type of CTR

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 funding and being satisfied with the overall quality  
2 of those publications, what else did you do to  
3 investigate any allegation that CTR had attempted to  
4 suppress the results of those studies?

5 A. I reviewed a number of depositions by grantees  
6 -- depositions is -- may not be the correct thing --  
7 affidavits by -- or some type of --

8 Q. Sworn statement.

9 A. -- sworn statement by grantees.

10 Q. Which ones?

11 A. Well, I don't remember exactly. I don't  
12 remember exactly which ones. They were half a dozen.

13 Q. Do you remember any of them?

14 A. I think Dr. William Gutstein had one.

15 G-u-t-s-t-e-i-n.

16 Q. Any others that come to mind?

17 A. They don't come to mind, but I can find them in  
18 --

19 Q. Go ahead then.

20 A. -- in some notes of mine.

21 Q. I was just interjecting that.

22 A. There were sworn statements by grantees that  
23 they were encouraged to publish their results, that  
24 they had complete independence, and that they  
25 exercised it. I have also come across information

1 either in depositions or sworn statements, I don't  
2 recall right now, from administrative members of the  
3 SAB, perhaps -- perhaps Dr. McAllister, to the effect  
4 that grantees had complete independence to pursue  
5 their investigation, complete freedom to publish  
6 where and when they wanted, and were encouraged not  
7 only to publish but to acknowledge funding by CTR.

8 Q. Did that complete freedom include the freedom to  
9 publish what they wanted to publish?

10 A. It is my understanding that that included what  
11 they wanted to publish and the way that they wanted  
12 to publish it where they wanted to publish it.

13 Q. You wouldn't expect anything less from a  
14 legitimate funding organization, would you?

15 A. I would not expect less.

16 Q. Please continue with the other criteria that you  
17 employed in this particular aspect of your  
18 investigation?

19 MR. ALLINDER: Excuse me. Could you  
20 clarify again what "this aspect" is, what you're  
21 asking about?

22 MR. GILL: Whether there was suppression.

23 MR. ALLINDER: Thank you.

24 A. There -- there is a conspicuous absence of  
25 complaints from perhaps over a thousand, 1100, some

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 large number of investigators who were funded by CTR  
2 that they were in any way censored or that the  
3 conditions attached to funding by CTR were any  
4 different from those provided by other funding  
5 organizations, such as the NIH or the American Cancer  
6 Society. That in itself tells you something.  
7 Moreover, almost all of these papers that were funded  
8 by CTR were multi-authored papers. They had three,  
9 four, or more authors in many instances. I would  
10 have expected, had there been suppression or  
11 censorship, that among these three or four thousand  
12 or more coauthors that -- most of whom are cranky,  
13 individualistic types characteristic of research,  
14 there would have been a human cry about censorship or  
15 some other inappropriate suppression of data. The  
16 fact that you are dealing with quite a few thousand  
17 investigators, none of whom have complained about  
18 censorship or suppression, I think is a very strong  
19 indication that it did not exist.

20 Q. Now do I recall correctly that you found the  
21 funding for CTR research grew significantly in the  
22 70s, 80s, and 90s, compared to what it was in the 50s  
23 and 60s?

24 MR. ALLINDER: Objection.

25 A. I think it did.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Would you expect that with significantly greater  
2 funding there would be significantly more research  
3 studies being published?

4 MR. ALLINDER: Object to the form.

5 A. That's not a necessary corollary. There has  
6 been substantial inflation of medical costs and all  
7 funding agencies, certainly including the NIH, have  
8 seen the costs of projects increase and sometimes it  
9 seemed exponentially, so that it's not a necessary  
10 corollary.

11 Q. I understood that you reviewed a number of the  
12 annual reports of TIRC and CTR?

13 A. I did.

14 Q. Did you review all of that? Or at least most of  
15 it?

16 A. I think I -- I think I reviewed all of them.  
17 Until 96.

18 Q. And I take it that your review focused at least  
19 in part on the description of the research studies  
20 that had been funded or published in a given year?

21 A. I reviewed those.

22 Q. Now based upon that review, did the number of  
23 research projects funded increase dramatically some  
24 time around 1970?

25 MR. PURDY: Object to the form.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 MR. ALLINDER: Object to the form.

2 A. Well I'd have to --

3 Q. Well let me try it this way: --

4 A. -- I'd have to review it. I can't give you an  
5 answer because I just don't remember.

6 Q. If we took the last five years in terms of  
7 approximately how many research projects were  
8 referenced in the annual reports of CTR --

9 A. I don't know.

10 Q. -- and we compared that to whatever's referenced  
11 in the first five years of TIRC, would there be more?

12 A. I would think that there would be more, but my  
13 -- I'd have to review it to give you a -- an  
14 accurate answer.

15 Q. I understand, and I'm not trying to limit you  
16 here, Dr. Rubin, but I'm just trying to get at what  
17 at least strikes me as rational that if the tobacco  
18 industry is providing \$40 million for CTR-funded  
19 research in a given year in the 90s versus \$500,000  
20 of -- of grant money in the 50s that there's likely  
21 to be more studies generated by the 40 million than  
22 by the 500,000 even when we factor inflation in?

23 MR. PURDY: Object to the form.

24 MR. ALLINDER: Object --.

25 MR. PURDY: It's argumentative and the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 documents speak for themselves.

2 MR. ALLINDER: So --

3 Q. Does that sound generally reasonable to you,  
4 Doctor?

5 MR. ALLINDER: -- object to the form.

6 A. It does sound reasonable, but the fact, you  
7 know, Res ipsa loquitur. Facts will have to speak  
8 for themselves. If you bring them in I'll look at  
9 them.

10 Q. And as I understand, your review of the -- this  
11 research indicated that at least after 1970 very  
12 little of the CTR-sponsored research related to  
13 tobacco use as a contributing factor to disease?

14 MR. ALLINDER: Object to the form.

15 Q. True?

16 A. Untrue.

17 Q. Well related at least directly to tobacco use --

18 MR. ALLINDER: Same objection.

19 Q. -- -- as a contributing factor?

20 MR. ALLINDER: Excuse me. Same objection.

21 A. Well I'm not going to accept that. I'm  
22 perfectly prepared to tell you why I don't accept  
23 that.

24 Q. Okay. Let me try to rephrase it then.

25 After 1970 does your review indicate that most

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of the CTR-sponsored research related to matters  
2 dealing with the etiology of disease?

3 MR. ALLINDER: Object to the form.

4 A. With the etiology of diseases that had been  
5 linked to tobacco use.

6 Q. And --

7 A. In other words, I didn't see very much or any  
8 papers dealing with the etiology of hemorrhoids or  
9 athlete's foot.

10 Q. But etiology of various forms of cancer and  
11 etiology of cardiovascular disease?

12 A. And pulmonary disease.

13 Q. And diseases falling within those broad  
14 categories are diseases that have been linked to  
15 smoking?

16 A. That's correct.

17 Q. Now, you're not aware of any -- based upon the  
18 review of documents that you have made in this case,  
19 I think you're telling me you're not aware of any  
20 author of a CTR-sponsored research study dealing with  
21 the etiology of diseases who complained that his or  
22 her research was censored in any way?

23 A. Well, there was one gentleman in the early 70s  
24 who complained indeed, a man by the name of  
25 Homburger, so you did have one person out of some

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 1100 who did complain.

2 (Reporter interruption.)

3 (Recess from 10:50 to 10:53 a.m.)

4 BY MR. GILL:

5 Q. Now Dr. Homburger's research was a little  
6 narrower than the etiology of lung cancer; true?

7 MR. ALLINDER: Object to the form.

8 A. As I understand it, he had a contract to develop  
9 a model of lung cancer produced by inhalation of  
10 smoking hamsters. That was the contract, as I  
11 understand it.

12 Q. And what the -- the smoking hamsters of course  
13 were inhaling tobacco smoke?

14 A. They were.

15 Q. So Dr. Homburger, who was someone who complained  
16 about being censored, was dealing with a research  
17 study that might have directly implicated tobacco  
18 smoke with lung cancer; true?

19 MR. ALLINDER: Object to the form.

20 A. It was designed to do that.

21 Q. And Dr. Homburger, at least according to  
22 testimony or documents that you've reviewed, felt  
23 that his efforts to publish the results of his study  
24 were censored in some way by representatives of CTR;  
25 true?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. Not true.
- 2 Q. Isn't that what Dr. Homburger felt?
- 3 A. Dr. Homburger felt that attempt had been made
- 4 hinder the publication of his results, but they were
- 5 published certainly in the JNCI.
- 6 Q. All right. Now aside altogether from whether or
- 7 not Dr. Homburger managed to get his results
- 8 published, you certainly wouldn't condone a funding
- 9 organization attempting to hinder a research grantee
- 10 from publishing the results of a study in the form
- 11 that the grantee thought was appropriate, would you?
- 12 A. I think that you are mistaking the conditions of
- 13 a research grant-in-aid and a contract. Those are
- 14 two different vehicles for funding research --
- 15 Q. Is it your understanding --
- 16 A. -- and have different criterion.
- 17 Q. Is it your understanding that Dr. Homburger was
- 18 pursuing a -- a contract research study for CTR as
- 19 opposed to being a grant recipient, in connection
- 20 with his complaints?
- 21 A. I think so.
- 22 Q. Have you ever testified to a different
- 23 understanding?
- 24 A. No.
- 25 Q. Would it make any difference with respect to the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 aspect of hindering publication if Dr. Homburger were  
2 working under a contract as opposed to a grant?

3 A. Well all of these things are situation driven,  
4 but the -- a -- by its nature a contract involves  
5 much more of a relationship with the funding agency  
6 than does a grant-in-aid.

7 Q. So the funding organization would have more  
8 control over what was actually published to the  
9 biomedical community with respect to providing  
10 contract funding than grant funding?

11 MR. ALLINDER: Object to the form.

12 A. In general that's true.

13 Q. Now when you quoted your understanding of Dr.  
14 McAllister's pronouncements about the complete  
15 independence of CTR researchers to publish their  
16 results, did you understand that he was excluding  
17 from that broad statement contract research?

18 A. I haven't given it any thought.

19 Q. If he was not, and did not intend, to exclude  
20 contract research from that statement, then the  
21 Homburger allegations would be inconsistent with Dr.  
22 McAllister's view; true?

23 MR. ALLINDER: Object to the form.

24 A. No, I -- I don't think that -- what I tried to  
25 indicate is that this is what Dr. Homburger claimed.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 His claims don't mean that they were true. There  
2 were other people who claimed that it bore no  
3 relation to the truth. So that in this case the  
4 proof of the pudding is in the eating. Was the paper  
5 published, were the data made available, or were they  
6 not? And the answer is quite clearly that the paper  
7 was published.

8 Q. So are you telling me, Dr. Rubin, that you  
9 haven't attempted to investigate the validity of Dr.  
10 Homburger's allegation -- or allegations about  
11 hindering?

12 MR. ALLINDER: Object to the form.

13 Q. Is that true?

14 MR. ALLINDER: Same objection.

15 A. I have seen information regarding Homburger's  
16 complaints, and I have also seen representations or  
17 information that what Homburger is saying is simply  
18 not true and that no one attempted to interfere with  
19 his scientific freedom, that there were authentic  
20 questions regarding the validity of his findings or  
21 his interpretation of those findings, and that the  
22 dispute was whether or not he, Homburger, had  
23 accurately depicted the findings, so that there are  
24 people who vehemently deny that Homburger was  
25 hindered from doing anything.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And you don't know whether he was or he wasn't;  
2 correct?

3 A. Personally, no.

4 Q. And you haven't been able to determine one way  
5 or the other from reviewing the data whether he was  
6 hindered or he wasn't hindered?

7 MR. ALLINDER: Object to the form.

8 Q. True?

9 A. I have examined the paper, and I have come to my  
10 own conclusions as to what it shows and what it  
11 doesn't show, but with all of the personal  
12 interactions at that time are clearly beyond me. I  
13 have not personally interviewed anyone.

14 Q. You have limited your review in this connection  
15 to the fact that regardless of allegations of  
16 hindering, publication actually occurred?

17 A. That's --

18 MR. ALLINDER: Object -- excuse me. Object  
19 to the form. Go ahead.

20 A. Yes, that's correct.

21 Q. And normally in the scientific community  
22 scientists are free to interpret the results of  
23 scientific studies in different fashions; true?

24 A. They are. I mean there are first amendment  
25 rights in this country; you're free to say anything

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 you want. Getting it published is a different  
2 matter.

3 Q. But that's one of the ways that science attempts  
4 to find the truth is through some sort of a debate  
5 amongst scientists as to whether or not various  
6 hypotheses have been satisfactorily established;  
7 correct?

8 A. Generally that's true.

9 Q. And certainly the author of a research study  
10 would be entitled to his or her view of what their  
11 study means; true?

12 A. Yes and no.

13 Q. Well --

14 A. I mean you're entitled to believe anything you  
15 want. If you want to believe that the conjunction of  
16 Pluto and Jupiter causes cancer or that UFOs cause  
17 cancer, you're free to believe it, but getting it  
18 published is a different matter, because it has to go  
19 through peer-review, so that no matter what you  
20 believe, you may not be able to disseminate your  
21 belief unless it goes through peer-review, in which  
22 case it doesn't mean that it's true, but it means at  
23 least there are some people out there who have read  
24 what you have written and have come to the conclusion  
25 that it is publishable. They don't come to the

1 conclusion it's true, they come to the conclusion  
2 it's publishable.

3 Q. But understanding everything you say on that  
4 subject, the author of a study should at least be  
5 allowed to express his or her interpretation of the  
6 results as part of the peer-review process; correct?

7 A. Well everyone is at liberty to do anything he  
8 wants that way.

9 Q. Okay. And a funding organization ought not to  
10 stifle the author of a research study from expressing  
11 his or her interpretation of what they found; true?

12 A. "Stifle" is a strong word. Certainly in a  
13 contract if the data are subject to other  
14 interpretations, I think that it's entirely  
15 reasonable to bring that to the attention of the  
16 author. The author should actually be grateful for  
17 any further input. Then he is at liberty after  
18 listening to whatever input there is, he is then at  
19 liberty to formulate the paper in any way he wants  
20 and submit it to a journal.

21 Q. That's the way it should work?

22 A. That's the way it worked here.

23 Q. And in terms of the funding organization drawing  
24 to the author's attention a different interpretation  
25 of the data, would you typically expect that that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 type of input would come from an attorney on behalf  
2 of the funding organization?

3 A. I don't know that it makes any difference where  
4 it comes from. I think that an organization that  
5 gives a contract certainly has every right to have --  
6 to alert the author or the investigator who has data  
7 as to any varying interpretations. Then it's -- the  
8 final responsibility will rest with the author. But  
9 input can come from any source and indeed frequently  
10 does today; that's the way it works. Biotech  
11 companies and all kinds of other organizations that  
12 give contracts, they -- they have input from lawyers,  
13 they have input from other scientists, from all kinds  
14 of people.

15 Q. You've written a number of -- of scientific  
16 papers that have been submitted for peer-review --  
17 for peer-review; have you not?

18 A. I have, many.

19 Q. Have some of those research projects been  
20 pursued based upon contract funding?

21 A. I have only had one contract in my life, and  
22 that is currently in force, and it's a contract from  
23 -- through NIH to develop some studies in certain  
24 aspects of genetics.

25 Q. And how long has that contract been ongoing?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Nine months. It's a year -- one-year contract.

2 Q. Does that contract permit NIH to censor in any  
3 way your interpretation of the data?

4 MR. ALLINDER: Object to the form.

5 A. This contract doesn't even mention anything  
6 about publication. It's to develop certain  
7 relationships and ways of collecting information.  
8 But I believe that there are some contracts which  
9 require pre-publication review of the papers.

10 Q. By the contract funder?

11 A. Yes.

12 Q. To determine if the contract funder is  
13 comfortable with not only the data but the  
14 researcher's interpretation?

15 A. I don't know enough about it.

16 Q. So you don't have any experience at all in  
17 judging those types of things?

18 A. No.

19 MR. ALLINDER: Object to the form.

20 Q. On your work for NIH are you free to publish if  
21 you come up with data and interpretations that you  
22 feel merit publication?

23 A. Absolutely.

24 Q. Okay. And is there anything in that contract  
25 that would allow NIH to censor any publication by you

1 of your interpretation of the data?

2 MR. ALLINDER: Object to the form.

3 A. My contract doesn't mention publication at all.

4 I'm free to do what I want.

5 Q. Would you agree to work under a contract that  
6 contained such provisions?

7 MR. ALLINDER: Object to the form.

8 A. Depends upon the nature of the contract. I  
9 could see such a -- such provisions as being  
10 immanently reasonable. In fact a lot of people work  
11 under such contracts, say clinical research trials  
12 funded by drug companies often have such stipulations  
13 in the contract. It's very common.

14 Q. In other words, those types of contracts are not  
15 consistent with the notion of a full and complete  
16 disclosure of the scientist's research results, are  
17 they?

18 MR. ALLINDER: Object to the form.

19 A. No, I -- I think that you're using the term  
20 "contract" to include a wide variety of  
21 arrangements. Some contracts have very strict  
22 criteria for submitting data and -- or  
23 pre-publication papers to the person or organization  
24 that awards the contract, others are very loose and  
25 are not at all interested, and others encourage

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 publication of any papers that come from the contract  
2 and want to be acknowledged.

3 Q. So it's your understanding that there are at  
4 least some types of contract funding situations that  
5 due to the provisions of the contract would be  
6 inconsistent with the notion of full and complete  
7 disclosure of research results to the public?

8 A. Unless approved by the contractor. There are  
9 such contracts, certainly.

10 Q. And --

11 A. In fact I think there are a lot of them today,  
12 because, you know, there are patent considerations  
13 and biotech testing, there are questions of  
14 submission for FDA approval. There are so many  
15 considerations that a -- a wide variety of  
16 arrangements exist.

17 Q. And there would be considerations with regard to  
18 whether a manufacturer's association would be  
19 comfortable with research results being published  
20 that might implicate the very products that those  
21 manufacturers produce; true?

22 MR. ALLINDER: Excuse me. Object to the  
23 form.

24 A. I'm not aware of that. I'm just -- I'm not  
25 aware of that at all. But maybe. Who knows?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So again, that's not an area that you would hold  
2 any expertise in?

3 MR. ALLINDER: Object to the form.

4 A. I don't consider myself an expert in that, no.

5 Q. Now getting back to Dr. Homburger, so I have  
6 this clear in my head, do I understand correctly that  
7 it's your opinion that if he was working under a  
8 contract with CTR that some provision in the contract  
9 may well have authorized CTR to hinder Dr.  
10 Homburger's attempt to publish the results of his  
11 study?

12 MR. PURDY: Object to the form.

13 MR. ALLINDER: Object to the form.

14 A. I do not know the details or any aspects of the  
15 contract that Dr. Homburger had with CTR. I'm unable  
16 to comment.

17 Q. All right. But normally, as a general rule,  
18 absent some specific contractual provision to the  
19 contrary, you would not expect the funding  
20 organization to attempt to hinder a researcher's  
21 efforts to publish his or her results?

22 MR. ALLINDER: Object to the form.

23 Q. True?

24 A. I don't believe that there was any attempt to  
25 hinder publication of Dr. Homburger's results. From

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 my understanding there were exceptions made to his  
2 interpretation of microscopic slides. Doc -- these  
3 were -- Dr. Homburger was made aware of these  
4 exceptions to his interpretation and was then  
5 encouraged to publish his paper.

6 Q. Well, first of all, Dr. Rubin, I thought you  
7 told me that you didn't attempt to investigate as a  
8 detective whether the allegations by Homburger about  
9 hindrance were true or not.

10 MR. ALLINDER: Object to the form.

11 A. That is correct. I'm trying to --

12 Q. Now setting that aside.

13 A. Setting that aside, --

14 Q. Yeah.

15 A. -- I'm trying to inform you what I do know.

16 Q. All right. Setting that aside and also setting  
17 aside the whole matter of whether Homburger's  
18 interpretations were correct or incorrect, okay, and  
19 focusing solely on the matter of the concept of a  
20 funding organization hindering the expression of the  
21 research author's results, is it your opinion that  
22 generally that should not occur absent some specific  
23 contract provision?

24 MR. ALLINDER: Object to the form.

25 MR. PURDY: Yeah, I'm going to object to

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 the form specifically because I think the question  
2 you asked, counsel, in all fairness you're asking him  
3 to set aside specifically a fact that he would have  
4 to consider in answering the question; i.e., --

5 MR. GILL: That's a --

6 MR. PURDY: -- whether -- .

7 MR. GILL: That's a speaking objection.

8 MR. PURDY: Well I'm trying to help you as  
9 to specific reason for the form question. I object  
10 to the form for the reasons stated.

11 BY MR. GILL:

12 Q. I'm going to ask it again, Dr. Rubin, try to get  
13 a clear record here.

14 My question doesn't go to whether there was  
15 hindering or not and it doesn't go to whether  
16 Homburger's interpretation of the results was correct  
17 or not. All right. Do --

18 A. Okay.

19 Q. -- we understand each other so far?

20 A. I got you.

21 Q. Okay. Do you believe that a funding  
22 organization should been permitted to hinder a  
23 contract researcher's attempt to express his  
24 interpretation of the results of his study in the  
25 absence of some specific contract provision that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 gives the funder that right?

2 MR. ALLINDER: Object to the form.

3 A. If qualified members of the granting  
4 organization are persuaded that the interpretation is  
5 correct, I think they have every right and even an  
6 obligation to inform the grantee of their  
7 reservations. Having said that, absent any clause  
8 which permits them to prohibit publication,  
9 publication can proceed according to the wishes of  
10 the grant -- of the grantee.

11 Q. Can and should proceed; correct?

12 A. Depending upon what the grantee wants to do; in  
13 other words, he may become aware that his  
14 interpretation is incorrect, in which case he may not  
15 want to publish it at all, or he may consider the  
16 reservations on the part of someone else in the  
17 granting organization to be incorrect, in which case  
18 he may not want to change a thing, or he may take it  
19 seriously and say, Well, I can change it and publish  
20 it in an alternate form. There are many variations  
21 possible.

22 Q. So if there's no contract provision and the  
23 researcher has heard the funding organization out  
24 with respect to its point of view, the researcher  
25 should be permitted to express his interpretation of

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 his results in pursuing the peer-review process  
2 absent some contract provision of the contract?

3 A. I don't understand.

4 MR. ALLINDER: Excuse me. Let him finish  
5 the question. Were you done?

6 MR. ALLINDER: I thought he was done.

7 MR. GILL: Why don't you read it back to  
8 us, please.

9 MR. ALLINDER: There was a pause at the  
10 end.

11 (The record was read by the reporter.)

12 MR. ALLINDER: Object to the form.

13 A. I would agree with that statement with one  
14 exception: The word "should" should be replaced by  
15 the word "is". Absent any provision to the contrary  
16 in the contract, he "is" permitted as a citizen of  
17 the United States to do anything he wants with his  
18 manuscript.

19 Q. And you would be critical of any funding  
20 organization that attempted to interfere with that  
21 process; true?

22 A. You will have to tell me what do you mean by  
23 "interfere".

24 Q. By attempting to hinder the ability of the  
25 researcher to express his interpretation of his

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 results.

2 MR. PURDY: Object to the form.

3 A. You know, you're -- you're too vague for me to  
4 understand what you mean, and I'm not being evasive  
5 here. Tell me what you mean by "hinder," tell me  
6 what you mean by "interfere," and I'll be pleased  
7 to respond to your question.

8 Q. How about if a representative of the funding  
9 organization attempted to censor the language that  
10 the researcher would use in the interpretation  
11 section of his research paper?

12 A. Well, let me interpret that for you. If a  
13 member of the granting organization is a pathologist  
14 with impeccable credentials who informs the grantee  
15 that his interpretation of cancer is incorrect, it  
16 would be entirely appropriate for him; that is, the  
17 pathologist, to inform the grantee of the fact that  
18 he is mistaken and that he is then employing the  
19 wrong terminology which would be quite misleading.  
20 The grantee, having received this information, is at  
21 liberty to do what he wishes, but it's entirely  
22 appropriate to alert him to this error on his part.

23 Q. How about if --

24 A. If you call that -- if you call that  
25 interfering, you see, another person might call that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 advising.

2 Q. How about if the funding organization had told  
3 Dr. Homburger that if you use the term "cancer" in  
4 connection with your research paper on laryngeal --  
5 larynpeal -- laryngeal cancer in hamsters through  
6 inhalation of smoke that your funding will be cut  
7 off, --

8 MR. ALLINDER: Objection.

9 Q. -- would that be advisory or a form of  
10 interference?

11 MR. ALLINDER: Object to the form.

12 A. It would depend upon the validity of the  
13 criticism. If I were getting a contract out to  
14 develop a certain machine and a certain methodology  
15 and I happen to be a pathologist I think who is  
16 reasonably adept at interpreting microscopic slides,  
17 and the grantee then shows me slides that he is  
18 interpreting as cancer that I know better, now I  
19 might say: Well, look, you don't have cancer here,  
20 and I don't think you ought to call something cancer  
21 that isn't cancer, and you better get better data or  
22 more data or better opinions, see, because this isn't  
23 cancer, and I am not going to support further work  
24 that's clearly erroneous.

25 That seems to me to be a reasonable position.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 You do not want dissemination of inaccurate and  
2 misleading data. It's then the obligation -- I would  
3 feel an obligation if someone examined my data that  
4 way to submit the slides, let's say, to a half a  
5 dozen other major people in the field and say, What's  
6 your opinion? I mean that's the way to get it. Now  
7 you may come back with three on one side and three on  
8 the other, in which case he has a dilemma, and he has  
9 to be careful about what he says. But these things  
10 are driven by situations.

11 Q. But do I understand then correctly, Dr. Rubin,  
12 that you wouldn't see a problem if a qualified  
13 representative of a funding organization were to say  
14 the to Dr. Homburger, We don't think that what you  
15 found is cancer and if you describe it as such we  
16 will withdraw all funding. Would that be  
17 appropriate?

18 A. It's depending on the situation.

19 Q. It might be appropriate in certain situations?

20 A. Could be appropriate under certain situations,  
21 could not been appropriate under other situations.

22 Q. How many situations like that have you become  
23 aware of in the over 40 years that you've been  
24 practicing medicine?

25 MR. ALLINDER: Object to the form.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Well let me give it to you in a little more  
2 expansive way. In examining all of the projects, all  
3 -- and all of the information regarding the CTR  
4 research program, I have never come across any  
5 situation such as that of Dr. Homburger. In my own  
6 experience I have also never come across this  
7 particular situation. On the other hand, I am aware  
8 from reading the newspapers that these things do  
9 occur, yes, in other situations. As you're aware,  
10 the -- the synthroid controversy, some others, are  
11 quite similar.

12 Q. Are you aware of Dr. Homburger's testimony that  
13 he did change the description he gave to the lesions  
14 that he found in the larynxes of his hamsters as a  
15 result of what he considered to be intimidation from  
16 CTR?

17 A. Well, Dr. Homburger may not been as easily  
18 intimidated as claimed. What his objection is to Dr.  
19 Sommers, who is a world-renowned pathologist who did  
20 not accept his diagnosis of cancer and said that  
21 these were really pseudoepitheliomatous,  
22 p-s-e-u-d-o-e-p-i-t-h-e-l-i-o-m-a-t-o-u-s,  
23 hypoplasia.

24 Q. These are precancerous lesions?

25 A. They can be, can be, but it's not necessarily.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 It's the kind of lesion for which pap smears are  
2 designed to find. When one finds those types of  
3 lesions, only a small proportion of women will  
4 develop cancer of the cervix who have that, the large  
5 majority do not, so it is a precancerous lesion in  
6 the sense that at least some of these lesions may  
7 develop into cancer, but that's epidemiologic, and  
8 actually in animals sometimes all you get is -- no  
9 matter what you do all you get is  
10 pseudoepitheliomatous hypoplasia, we don't use that  
11 term today, but it was in vogue at that time, and  
12 indeed was used by Dr. Homburger in many of his other  
13 interpretations, so.

14 Q. But Dr. Homburger didn't truly believe that  
15 those lesions were simply precancerous in the  
16 hamsters, did he; he thought they were cancerous?

17 MR. ALLINDER: Object to the form.

18 A. I didn't -- I've looked through that paper that  
19 he did publish. I don't see it.

20 Q. You don't agree that they were cancerous?

21 A. I said -- let me make clear what I just said. I  
22 said I didn't see it. The documentation provided by  
23 Dr. Homburger in the paper was in the form of  
24 photomicrographs. I didn't see any invasive cancer  
25 in those photomicrographs, so --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. And he didn't claim any in the paper, did he?

2 MR. ALLINDER: Object to the form.

3 A. He's very careful in that paper and I'd have to  
4 go over the paper again to see whether he referred to  
5 I think one or two as microinvasive cancer. He -- he  
6 may have. In that paper, --

7 Q. But the sworn --

8 A. -- in the 74 paper.

9 Q. You've reviewed some of his sworn testimony;  
10 have you not?

11 A. I have.

12 Q. And in some of his sworn testimony he's  
13 testified that he felt more strongly about the  
14 lesions in the larynxes of the hamsters than what his  
15 paper contained; true?

16 A. That's what he says.

17 Q. And he stated under oath that it was his  
18 intention to interpret those lesions as cancerous  
19 prior to the time that he was contacted by  
20 representatives of CTR on that subject; true?

21 A. He was contacted by Dr. Sommers.

22 Q. He was also contacted by an attorney named  
23 Finnegan; was he not?

24 A. I don't have any -- I don't know anything about  
25 that, because I know that Dr. Sommers reviewed the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 slides. That's really all I know about it.

2 Q. Everything you know about this incident is  
3 strictly secondhand based upon your review of  
4 documents; correct?

5 A. Second, third, you know.

6 Q. But you know that Dr. Homburger has alleged that  
7 he was contacted by Mr. Finnegan, an  
8 eminently-qualified advocate on behalf of the tobacco  
9 industry, with respect to the terminology that he  
10 should use in his paper; true?

11 MR. ALLINDER: Object to the form.

12 A. No, I don't know. I don't know what Finnegan  
13 said to him. I -- I recall that Dr. Sommers examined  
14 the slides. That's what I recall.

15 Q. Do you recall reading Dr. Homburger's  
16 allegations regarding Finnegan's contact?

17 A. I vaguely have a rec -- recollection of the  
18 name.

19 Q. Finnegan would not be an eminently-qualified  
20 pathologist, would he?

21 MR. ALLINDER: Object to the form.

22 A. I don't think he was board certified.

23 Q. And his qualifications in the field of pathology  
24 would in no way measure up to Dr. Homburger's; true?

25 A. Or Dr. Sommers.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. But certainly not to Dr. Homburger's?

2 A. No, Homburger was not a pathologist.

3 Q. Well was Dr. Homburger more qualified to  
4 interpret the nature of the lesions in the hamsters  
5 than you would expect Mr. Finnegan was?

6 MR. ALLINDER: Object to the form.

7 A. I think he was somewhat more qualified but --

8 Q. Hamburger was?

9 A. I would guess that he was, but whether or not he  
10 was qualified to distinguish hypoplasia from cancer,  
11 that's another matter.

12 Q. If he wasn't qualified to do that then he wasn't  
13 qualified to do the study, was he?

14 A. Well he had --

15 MR. ALLINDER: Object -- excuse me. Object  
16 to the form.

17 A. He had coworkers with him.

18 Q. Were some of his coworkers in disagreement with  
19 Homburger based upon documents that you've reviewed?

20 A. I don't know.

21 MR. ALLINDER: Object to the form.

22 Q. One would have to assume that the SAB would not  
23 have given the Homburger study a high enough priority  
24 for funding -- to obtain funding unless the SAB felt  
25 that Homburger and his staff were up to the job?

1 A. Contracts are not awarded on the same priority  
2 basis as grants.

3 Q. So if this happened to have been a contract, the  
4 SAB never saw it?

5 MR. ALLINDER: Object to the form.

6 A. I -- I have no knowledge of that whatsoever.

7 Q. Is it your understanding that with regard to  
8 contract research, CTR did not seek the advice of the  
9 SAB?

10 A. Well, I don't know. What CTR wanted to do, as I  
11 understand it, was to have Dr. Homburger develop his  
12 system, smoking system to develop lung cancer in  
13 hamsters, which would have been a very good model and  
14 then you could see how tobacco smoke actually  
15 produces cancer. The administrative background as to  
16 how that grant was awarded and how it was evaluated I  
17 don't know.

18 Q. You don't know for sure whether that was a  
19 contract or a grant?

20 A. No, I think it was a contract.

21 Q. Based upon your review of all the documents that  
22 you've seen in this case, do you under -- have an  
23 understanding of how the administrative process  
24 worked at CTR with regard to the funding of  
25 contracts?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. ALLINDER: Object to the form.

2 A. I don't know much about that.

3 Q. Did you come across material which indicated  
4 that with respect to contracts it would only be the  
5 scientific director of the SAB that would interact  
6 with CTR staff members as to whether or not to fund a  
7 contract?

8 MR. ALLINDER: Object to the form.

9 A. I don't know.

10 Q. If it were done that way, the only people  
11 involved in the decision to fund would all be  
12 employees of CTR; true?

13 MR. ALLINDER: Object. Object to the  
14 form.

15 A. It's redundant, the way you've asked the  
16 question.

17 Q. And Dr. Homburger never expected to develop lung  
18 cancer in the hamsters absent some carcinogen priming  
19 agent; true?

20 MR. ALLINDER: Object -- object to the  
21 form.

22 A. I don't know what he expected to find. I never  
23 talked with Dr. Homburger at the time.

24 Q. You wouldn't expect to have hamsters develop  
25 lung cancer, would you, by inhaling smoke?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. ALLINDER: Object to the form.

2 A. Before doing the experiment? They might. I

3 wouldn't know. That's why I'd do the experiment.

4 Q. So it wasn't a foregone conclusion that's

5 hamsters were going to develop lung cancer from smoke

6 inhalation?

7 MR. ALLINDER: Object to the form.

8 A. Well that's for sure.

9 Q. And if in fact it turned out that they didn't

10 develop lung cancer, then CTR as an organization

11 owned by the smoking industry might well wish to

12 publish that fact; true?

13 MR. ALLINDER: Object to the form.

14 A. Well, CTR didn't publish anything. You mean CTR

15 might --

16 Q. Publish the fact?

17 A. -- like to see that it was published.

18 Q. And then comment through press releases or

19 whatever on those findings?

20 A. This is all hypothetical. I -- I don't really

21 know what you're talking about.

22 Q. It would certainly be consistent with the

23 interest of an industry that wanted to deny the cause

24 and effect relationship between smoking and health;

25 true?

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. ALLINDER: Object to the form.

2 A. You've lost me a little bit. I -- the fact that  
3 hamsters did not develop cancer of the lung after  
4 being exposed to the inhalation of cigarette smoke,  
5 according to your question, is your question would  
6 that be something that cigarette companies might want  
7 to have publicized at that time? Might have.

8 Q. And you haven't seen anything that suggested to  
9 you that Dr. Homburger ever thought that he was  
10 considering to develop lung cancer in hamsters by  
11 inhaling smoke unless there was some priming agent  
12 involved.

13 MR. ALLINDER: Object to the form.

14 Q. True?

15 MR. ALLINDER: Object to the form.

16 A. As I said, I didn't talk with Dr. Homburger  
17 prior to his accepting the contract. I assume he  
18 thought he was under some -- under some kind of  
19 circumstances involving smoking that cancer to the  
20 lung would develop. The precise details of what was  
21 going on in his head, I really don't know.

22 Q. Well based purely on what you've read of Dr.  
23 Homburger's sworn testimony and what you've read that  
24 he's written, have you ever read anything by him that  
25 suggested that he expected to develop lung cancer in

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 hamsters absent a priming agent?

2 MR. ALLINDER: Object to the form of the  
3 question.

4 A. I don't know.

5 Q. And he sought funding from CTR to take the next  
6 step in his research of using a carcinogen priming  
7 agent with hamsters in smoke inhalation studies;  
8 true?

9 MR. ALLINDER: Object to the form.

10 A. True, but incomplete. He sought funding not  
11 only from CTR, but he also sought funding from the  
12 National Cancer Institute. He was denied funding not  
13 only by CTR, but also by the foremost granting agency  
14 in the field of cancer, the National Cancer  
15 Institute.

16 Q. And his denial of funding by the National Cancer  
17 Institute followed the controversy over whether or  
18 not he had found cancerous lesions in the larynxes of  
19 hamsters; correct?

20 MR. ALLINDER: Object to the form.

21 A. Correct, but incomplete. Chronologically that's  
22 true. The inference that this controversy had  
23 anything to do with the rejection by the National  
24 Cancer Institute is almost ludicrous. In preparing an  
25 application or submitting an application to NIH,

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 you're required to present preliminary data, and in  
2 preliminary data he would have supplied the  
3 photomicrographs of the larynx, which he claimed to  
4 be -- have produced cancer; and presumably he was  
5 unable to convince the reviewers at the National  
6 Cancer Institute, whoever they were, they're  
7 anonymous, because they served on the committee, but  
8 whoever they were, considering the composition of  
9 these committees, they were eminent investigators in  
10 the field who clearly didn't feel that Homburger had  
11 proved his case.

12 Q. And do you know whether the CTR played any role  
13 in lobbying the National Cancer Institute about  
14 whether to fund Dr. Homburger?

15 MR. ALLINDER: Object to the form.

16 A. Well the first thing is I have no knowledge of  
17 lobbying, I am not an expert in that, and I don't  
18 know anything about it. The second thing is that they  
19 would -- they would not only have had to influence  
20 the administrators of the NCI, they would also have  
21 to know who was reviewing the anonymous reviewers of  
22 Homburger's grant application. They would have had to  
23 be able to influence them to change their minds and  
24 to submit reviews that were dishonest. I mean the  
25 whole scenario is ludicrous.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. But you simply don't know the reasons why the  
2 review board at NCI didn't fund Dr. Homburger;  
3 correct?

4 A. Well, I -- from my experience, having served  
5 contemporaneously on a review board at that time, so  
6 I know exactly how review boards worked at NIH at  
7 that time because I was on a review board at that  
8 time, --

9 Q. So you have opinions, but all I'm saying, Dr.  
10 Rubin, --

11 A. Well, I know --

12 Q. -- is that you don't have any firsthand  
13 knowledge, do you?

14 A. I have firsthand knowledge of how NIH worked, I  
15 have firsthand knowledge of how review sections  
16 worked, and it is inconceivable to me that the  
17 reviewers of Homburger's grant were influenced by  
18 CTR, by tobacco companies, by Mr. Finnegan, or by any  
19 other considerations.

20 Q. And you do not make that statement as an  
21 advocate?

22 A. I'm not an advocate. I was there at the time at  
23 NIH serving on study sections. I know how those  
24 things work. I know the kind of people who are  
25 recruited for the study sections. I know the

1 anonymity that obtains with the reviewers. So I'm  
2 speaking from firsthand knowledge, contemporaneous  
3 knowledge of the workings of the NIH.

4 Q. Was Dr. Gio Gori the administrator of NCI at  
5 that time?

6 A. The name Gori is familiar to me, and I know he  
7 was an administrator, but I -- I don't -- you know, I  
8 don't know much about the workings of NCI at the  
9 time.

10 Q. Now when Dr. Homburger undertook the study  
11 involving smoke inhalation of hamsters, at that time  
12 the study did not expect to focus on laryngeal  
13 cancer, did it?

14 MR. ALLINDER: Object to the form.

15 A. The contract was for lung cancer.

16 Q. And so Dr. Homburger's findings with regard to  
17 laryngeal cancer were outside the scope of his  
18 contract as you understand it?

19 MR. ALLINDER: Object to the form.

20 A. As I understand, the contract was for lung  
21 cancer. I don't think laryngeal cancer was part of  
22 the contract.

23 Q. Now, we've talked at length about Dr.  
24 Homburger's situation, and you mentioned previously a  
25 Dr. Guts -- Gutstein. Is there anybody else that you

1 can specifically recall that you investigated with  
2 respect to this allegation that CTR attempted to  
3 suppress the results of research studies?

4 MR. ALLINDER: Object to the form of the  
5 question.

6 A. I think there are a half a dozen or somewhere in  
7 that ballpark other affidavits from --

8 Q. Scientists who --

9 A. -- scientists who received some kind of funding  
10 from CTR.

11 Q. You came across another half a dozen scientists  
12 who alleged that CTR in some way or other attempted  
13 to censor the results of their studies?

14 MR. ALLINDER: Excuse me. Object to the  
15 form of the question. I think you misunderstood his  
16 earlier question.

17 MR. PURDY: You did.

18 MR. ALLINDER: I'd like him to clarify.

19 Q. Let me ask it again in case there was some  
20 misunderstanding.

21 A. Maybe I did misunderstand.

22 Q. Other than Dr. Homburger -- Dr. Homburger  
23 clearly was alleging, rightly or wrongly, --

24 A. What?

25 Q. Dr. Homburger as far as you know certainly

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 alleged, whether rightly or wrongly, that he was the  
2 victim of some attempt to censor his publication of  
3 the results of his study; correct?

4 A. That's correct.

5 Q. Now based upon everything else that you have  
6 reviewed in this case, can you think of anybody else  
7 who made similar allegations directed towards CTR?

8 A. Similar to Homburger? Not really. I -- I think  
9 there is a sworn statement that was issued on the  
10 part of Carol Henry who was the director of a project  
11 by Microbiological Associates, also under a contract  
12 to develop a model in mice, and she --

13 Q. Was this a study dealing with the etiology of  
14 disease or was it more focused toward the  
15 relationship between tobacco smoke and disease?

16 A. It's tobacco smoke. It's inhalation of tobacco  
17 smoke by mice in an attempt to develop lung cancer in  
18 mice as a model to study.

19 Q. So similar to Dr. Homburger's study in the sense  
20 that smoke was being inhaled by animals in an attempt  
21 to determine what effect that might have on the  
22 development of lung cancer?

23 MR. ALLINDER: Excuse me. Object to the  
24 form.

25 A. Yeah, her allegations are different from

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Homburger's.

2 Q. But the nature of her study is somewhat similar?

3 A. You substitute mice for hamsters.

4 Q. So she wound up making the same general

5 allegations of censoring and attempt to censor by CTR

6 as Homburger did?

7 A. No.

8 MR. ALLINDER: Object to the form.

9 Q. Did she make any allegations connected to this

10 Mr. Finnegan?

11 A. I have no knowledge of that fact.

12 Q. What have you reviewed in connection with Carol

13 Henry's allegations?

14 A. I've reviewed a deposition transcript and I have

15 reviewed the final report of Microbiological

16 Associates with regard to these studies.

17 Q. Now in her deposition Ms. Henry certainly

18 discussed Mr. Finnegan at length; did she not?

19 A. I don't remember that.

20 Q. You don't recall that?

21 A. I do not remember.

22 Q. What was -- what is your recollection of Ms.

23 Henry's allegations? Dr. Henry.

24 A. Dr. Henry did not like the Forward which was

25 written by Dr. Sommers, and I think she didn't like

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the order of two sections, I think she preferred to  
2 have one before the other or vice versa, I don't  
3 remember exactly, but basically what she said is that  
4 there was no censorship, interference, or changes at  
5 all with regard to the data or -- or actually her  
6 writing. Her-- her beef was the introduction  
7 basically written by Dr. Sommers.

8 Q. Do you recall that she was also upset that CTR  
9 published a book about her study without ever letting  
10 her know that that was occurring?

11 A. I don't recall the details. Something like that,  
12 but I -- I don't recall exactly what it was.

13 Q. In other words, CTR, pursuant to this contract,  
14 took Dr. Henry's study, added a Forward from Dr.  
15 Sommers, rearranged some organization of the study,  
16 and didn't tell Dr. Henry about any of that?

17 MR. ALLINDER: Object to the form of the  
18 question.

19 Q. Is that all true?

20 MR. ALLINDER: Object to the form of the  
21 question.

22 A. I don't remember exactly what she was told, what  
23 she was not told.

24 Q. Assuming that is all true, would that have been  
25 unusual in your experience dealing with the funding

1 of medical research projects?

2 MR. ALLINDER: Object to the form of the  
3 question.

4 A. The final report that -- of Microbiological  
5 Associates is not the kind of publication that I  
6 personally have ever been involved in, and I can't  
7 answer your question whether --

8 Q. Now Dr. Sommers' Forward in this book, have you  
9 reviewed it?

10 A. I did.

11 Q. It contains basically an interpretation of the  
12 data; does it not?

13 A. It does.

14 Q. Do you recall that Dr. Henry during her  
15 deposition complained that she had been prohibited  
16 from including an interpretation of the data in her  
17 report, the report that she was going to submit for  
18 publication?

19 A. I don't recall that. It may be there.

20 Q. Do you recall who it was that Dr. Henry alleged  
21 that prohibited her from adding an interpretation of  
22 the data to her report?

23 A. No, I don't remember.

24 Q. You don't recall that it was Mr. Finnegan?

25 A. I don't recall.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. Based upon the review that you have made over  
2 the years of research studies published in medical  
3 journals, they always contain some data; do they not?

4 A. Well, unfortunately, you can come across some  
5 papers that have atrocities of data, but they should.

6 Q. Let me say generally. Generally --

7 A. They should, yes.

8 Q. Generally the papers deal with data; do they  
9 not?

10 A. They do, peer-review papers.

11 Q. Peer-review papers would deal with data --

12 A. Yes.

13 Q. -- and then the authors would attempt to  
14 interpret the data?

15 A. That is correct.

16 Q. And then that sets up a process of debate that  
17 may or may not emerge within the medical -- the  
18 biomedical community as to whether or not the  
19 interpretation of the data is valid or not?

20 A. That's unexceptional.

21 Q. That's the way it usually occurs; correct?

22 A. I would agree with that.

23 Q. Now, have you ever come across a situation where  
24 the author of a research paper was prohibited by the  
25 funding organization from including her

1 interpretation of the data in the paper she submitted  
2 for publication?

3 A. I'm unaware of these -- of such instances.

4 Q. You would not condone that type of conduct,  
5 would you, Dr. Rubin?

6 MR. ALLINDER: Object to the form.

7 A. Well, I don't think that people should interfere  
8 with the publication of valid data.

9 Q. And Dr. Sommers' interpretation of Dr. Henry's  
10 data apparently was different than Dr. Henry's  
11 interpretation; true?

12 MR. ALLINDER: Object to the form of the  
13 question.

14 A. Not really, no.

15 Q. Not really?

16 A. No.

17 Q. Didn't Dr. Henry reach the conclusion that the  
18 data suggested an association between smoke  
19 inhalation in mice and the development of  
20 precancerous conditions?

21 A. No.

22 Q. Cancerous conditions?

23 A. Dr. Henry acknowledged that her data did not  
24 show that tobacco smoke was carcinogenic to the mouse  
25 lung by the accepted criterion of medical research.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 Q. Meaning a confidence level of 95 percent?
- 2 A. That's correct. She acknowledged that. She --
- 3 if you read her own data, I think it's a little
- 4 confusing depending on the time, but the major -- her
- 5 major finding was that P equals .14, which is
- 6 certainly unacceptable, and that actuarial -- there's
- 7 a statement to the effect that actuarial analysis of
- 8 the data showed that there was no difference between
- 9 the control and the sham exposed mice.
- 10 Q. Well P equals 1.4 --
- 11 A. .14.
- 12 Q. -- .14 equals what confidence level?
- 13 A. Exactly that, .14. You want the reciprocal of
- 14 .86?
- 15 Q. You don't recall her coming to the conclusion
- 16 that she obtained a confidence level of 93 percent
- 17 between the -- the smoking mice and the sham smoking
- 18 mice that were all treated exactly the same way
- 19 except for the condition of the smoke?
- 20 A. It's -- she did that at a very -- at a single
- 21 time period, but that if you extended the time
- 22 period, which is the appropriate thing to do, do an
- 23 actuarial analysis, there was no difference, and then
- 24 what -- what she comes to the conclusion is that
- 25 despite the lack of statistical significance, she

1 felt that her data demonstrated that tobacco smoke  
2 was weakly carcinogenic, and you can't do that. I  
3 mean it either is significant or it's not  
4 significant. And --  
5 Q. Well would it be valuable to know that cigarette  
6 smoke might be weakly carcinogenic?  
7 A. It doesn't show that it's weakly carcinogenic.  
8 Q. If it did.  
9 A. I mean it's not true and it's a complete  
10 misunderstanding of what weakly carcinogenic means.  
11 But in any event, without going into a lengthy  
12 discussion which is technical, I mean it either is  
13 statistically significant or it is not -- not  
14 statistically significant, and in this case it was  
15 not. And it totally -- it's a totally selective  
16 interpretation; that is, data that she feels supports  
17 this so-called weak carcinogenicity in the animals is  
18 selected to buttress her conclusion. Data on  
19 carcinogen-primed animals which do not support her  
20 conclusions, in fact support a conclusion that  
21 cigarette smoke protects against the action of  
22 carcinogens and which is statistically significant,  
23 is not selected for her, so she has a selective  
24 memory or bias with respect to these. The entire  
25 issue of the greater incidence of shelf --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. To kind of --

2 A. -- controls -- Please let me continue.

3 Q. Go ahead.

4 THE WITNESS: Am I permitted to finish  
5 under the rules of the deposition?

6 MR. PURDY: You are.

7 MR. ALLINDER: Most certainly. Go ahead.

8 A. The entire issue of shelf controls, which in  
9 this particular case assumes a particular  
10 significance, is left untouched, so --

11 Q. Dr. Henry did feel --

12 MR. ALLINDER: Excuse me. Excuse me.  
13 Doctor, --

14 MR. GILL: Are you done now, Doctor?

15 MR. ALLINDER: -- are you done?

16 THE WITNESS: I'm through.

17 MR. ALLINDER: May I ask you a question  
18 before you continue, or are you getting close to a  
19 breaking point?

20 MR. GILL: I've got -- I just want to  
21 finish this area and then we'll break for lunch,  
22 Bill.

23 BY MR. GILL:

24 Q. Dr. Henry did feel that further research was  
25 warranted; did she not?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. She felt that it was.

2 Q. CTR refused to provide funding for further  
3 research to Dr. Henry; true?

4 A. That's my understanding.

5 Q. Now setting aside altogether whether Dr. Henry's  
6 interpretation of the data was valid or not, you  
7 agree that her interpretation of the data apparently  
8 was different than Dr. Sommers' interpretation of the  
9 data --

10 MR. ALLINDER: Object to the form.

11 Q. -- in some respects?

12 MR. ALLINDER: Object to the form of the  
13 question.

14 A. I'm not sure that's so. I think if you pin Dr.  
15 Henry down she will acknowledge the points that I  
16 have just brought out to you which form the basis of  
17 Dr. Sommers' opinion. I think she will acknowledge  
18 all of that. What Dr. --

19 Q. You think that after reading her deposition?

20 A. Yes. Yes, I think she would. I think she has,  
21 because she does not dispute that the data have been  
22 presented in an educated and accurate form, so in a  
23 formal sense, Dr. Henry would agree that by accepted  
24 scientific criteria for publication she has not  
25 proved a carcinogenic effect of tobacco smoke in the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 mouse lung.

2 Q. But you don't think that Dr. Henry would have  
3 written the Forward to the CTR book on her study in  
4 the same way that Dr. Sommers wrote it, do you?

5 MR. ALLINDER: Object to the form of the  
6 question.

7 A. I don't know how Dr. Henry would have written a  
8 Forward. I have never asked her that question.

9 Q. CTR never asked her to submit a draft of a  
10 Forward as far as you know; true?

11 A. I have no --

12 MR. ALLINDER: Object to the form.

13 A. -- knowledge of that.

14 MR. ALLINDER: Excuse me. Excuse me.  
15 Object to the form of the question. You got to pause  
16 a bit. Thank you.

17 Q. And when her paper was published it didn't  
18 contain her interpretation of the data, did it?

19 MR. ALLINDER: Object to the form of the  
20 question.

21 A. I think it contained the data.

22 Q. So what the biomedical community got with regard  
23 to Dr. Jeffries' -- Dr. Henry's data was an  
24 interpretation by Dr. Sommers, not an interpretation  
25 by Dr. Henry; true?

1 MR. ALLINDER: Object to the form of the  
2 question.

3 A. I don't think that's true. I think the entire  
4 volume is there for the biomedical community. Dr.  
5 Sommers' interpretation is a quarter of a page or a  
6 third of a page, something like that, and then you  
7 have a large document giving all of the information  
8 with the interpretation of the information in the  
9 text.

10 Q. And Dr. Sommers, of course, is an employee of  
11 CTR?

12 A. I don't know what he is now. He was at the  
13 time.

14 Q. And at the time a company owned by the tobacco  
15 industry?

16 A. I don't know the exact legal relationships.

17 MR. GILL: This is a good point to break.

18 MR. ALLINDER: Okay.

19 (Luncheon recess taken from 12:10 to 1:13  
20 p.m.)

21 (Reporter's note: 3 hours, 19 minutes of  
22 running testimony to this point.)

23 A F T E R N O O N S E S S I O N

24 BY MR. GILL:

25 Q. Dr. Rubin, you will recall before our lunch

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 break we were discussing in general the subject of  
2 allegations of suppression with respect to the  
3 research funding by CTR. You do recall that?

4 A. I recall our discussion.

5 Q. Okay. In addition to Doctors Homburger and Dr.  
6 Henry that we -- that we have discussed, are there  
7 any other individuals that you have located in your  
8 review of the documents that expressed allegations  
9 that there was some attempt to suppress or censor  
10 their research results?

11 A. I don't recall any at this time.

12 Q. And I take it that you attempted to review the  
13 documents that you were provided as carefully as  
14 possible with respect to the possibility of that  
15 issue arising through such allegations?

16 A. Well, you would agree with me that I'm not  
17 talking from notes and I do not have all of the  
18 documents with me here, so that per force I am  
19 responding to your questions really from my immediate  
20 recall so that if any of my answers really are  
21 incomplete and you can draw my attention to them,  
22 perhaps you'll refresh my memory. I -- I can't  
23 guarantee you that I have perfect recall, and it may  
24 be that in this very substantial review that I have  
25 made that not everything comes to mind immediately.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 So I think that my answers have to be taken in that  
2 context.

3 Q. And that qualification is accepted, Dr. Rubin.

4 But in other words, subject to something jogging your  
5 memory as you sit here at the moment, you can't think  
6 of any other individuals who made similar  
7 allegations?

8 A. No.

9 Q. And I take it you recognized that this was an  
10 issue or subject that was likely to come up during  
11 the deposition today?

12 A. Well I have no knowledge of what was going to  
13 come up. My instructions are simply to answer all  
14 questions truthfully and to the best of my ability.

15 Q. Did you give any thought yourself in preparing  
16 for the deposition as to what types of issues or  
17 subjects might be discussed during your deposition?

18 A. In general yes, but specifically no.

19 Q. What did you think about in general might come  
20 up?

21 A. Well I thought we would discuss the quality of  
22 research done by the CTR, the quality of the  
23 journals, the nature of other funding, the types of  
24 institutions that received funding, the integrity of  
25 the members of the SAB, their qualifications for

1 evaluating grants. Those seem to me to be the most  
2 important items to consider in response to the  
3 allegations made about the CTR.

4 Q. And the things that you've just recited, if I'm  
5 not mistaken, were the primary focus of your  
6 investigation; correct?

7 A. They were the primary focus, yes.

8 Q. Now your -- your Expert Report has got a -- a  
9 brief reference to the subject of public relations  
10 and you point out I think in your report that it's  
11 not unusual that there be some public relations  
12 aspect to the release of a research study. Is that a  
13 fair way to put it?

14 A. If -- if the research study is of sufficient  
15 general interest it is not at all uncommon for  
16 investigators, and administrators, to be interviewed  
17 by reporters and for lay versions of the research to  
18 be disseminated to the press or other media.

19 Q. Disseminated through press releases in those  
20 situations?

21 A. It's --

22 MR. ALLINDER: Ah --

23 A. Sometimes it's press releases. All  
24 institutions, including universities, research  
25 institutes, occasionally have press releases. In

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 other instances reporters receive copies of journals  
2 before they're published and have -- with have an  
3 embargo date; that is, stories regarding the articles  
4 cannot appear before the journal is published, but  
5 they may on their own interview the investigators  
6 before the actual publication, delay the publication  
7 of a story after the publication of the journal. So  
8 there are different methods. There may be cases  
9 where some investigators want their own work  
10 publicized and will call reporters. I wouldn't doubt  
11 that that happens, it's legitimate.

12 Q. But you're no -- you don't regard yourself as an  
13 expert in the field of public relations?

14 A. Quite the contrary. I consider that an area in  
15 which I may even be deficient.

16 Q. And you're not an expert in any -- any aspect of  
17 how public relations is conducted?

18 MR. ALLINDER: Objection for the form of  
19 the question.

20 Q. Is that fair to say?

21 MR. ALLINDER: Same objection.

22 A. Well, I'm not an expert. No, I, -- my view of  
23 public relations is that of any other layman in the  
24 field. I haven't seen any paparazzi around medical  
25 researchers but even that may come some day.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. But as a lay person, is it your understanding  
2 that one of the purposes of public relations is to  
3 persuade the general public to a particular position  
4 or proposition?

5 MR. ALLINDER: Objection to the form of the  
6 question.

7 A. The public relations that I am familiar with is  
8 more to -- to disseminate information about the  
9 institution; for instance, universities want the  
10 important research results disseminated to the lay  
11 press. This will enhance the reputation of the  
12 institution, and as a result better students will  
13 apply for admission, better graduate students may  
14 want to do research there, faculty may wish to be  
15 recruited to that institution, donors may wish to  
16 endow such institutions, so there are a lot of  
17 benefits to be derived from a -- a good reputation,  
18 and all institutions that perform research to my  
19 knowledge do have public relations staffs or -- or  
20 some equivalent.

21 Q. There's a lot to be gained from a good  
22 reputation, not only in the field of medicine, but in  
23 many other fields as well?

24 A. I think there are some biblical expressions or  
25 citations to that effect.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And one of -- from a lay person's perspective,  
2 one of the goals of public relations would be  
3 basically to commun -- communicate information in a  
4 favorable light to the entity that is engaging in  
5 public relations; true?

6 A. Would you -- would you please repeat that. I  
7 didn't quite get that.

8 Q. Sure. Would you read it back, please.

9 (The record was read by the reporter.)

10 A. I -- please rephrase that.

11 Q. Sure, I'll been happy to.

12 One of the goals of public relations is, first  
13 of all, to communicate information; correct?

14 A. That is correct.

15 Q. And to attempt to communicate the information in  
16 a manner that will be perceived as favorable to the  
17 interests of the party who is employing the public  
18 relations; true?

19 A. That would seem to be reasonable.

20 Q. Now you also have certain opinions in your  
21 report in connection with the special projects that  
22 were undertaken as a result of CTR funding; correct?

23 A. That's correct.

24 Q. And if I understood your report correctly, in a  
25 general sense what you found was that you saw no

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1   impropriety with respect to the manner in which the  
2   special projects of the CTR were funded and  
3   conducted; is that true?

4   A.   That is correct.

5   Q.   And no impropriety with respect to the  
6   involvement of lawyers for the tobacco industry in  
7   CTR special projects?

8               MR. ALLINDER:  Objection to the form of the  
9   question.

10  A.   I didn't see any impropriety in that.

11  Q.   And I think what you're saying in your report is  
12  that simply because a lawyer might be involved in  
13  some manner in the funding or the conduct of a  
14  research study, by itself that doesn't establish that  
15  there's any bias involved; is that true?

16  A.   Does not imply any bias on the part of the  
17  investigator.

18  Q.   And does your opinion with respect to the  
19  involvement of lawyers in CTR special projects go  
20  beyond the parameters of the opinion that I just  
21  repeated or recited to you?

22               MR. ALLINDER:  Object to the form of the  
23  question.

24  A.   I don't really understand the question.  I may  
25  be getting dense, but --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418  1-800-553-1953

1 Q. It wasn't well --

2 A. -- it's a little vague.

3 Q. It wasn't well put and I apologize. Let me try  
4 again.

5 You've told us that you don't find any  
6 implication of bias in the result of a research  
7 project simply because a lawyer happened to be  
8 involved in either the funding or the conduct of the  
9 research; true?

10 A. I would agree with that.

11 Q. Okay. Now beyond that opinion, have you reached  
12 any other opinions on the subject of lawyers  
13 involvement in CTR projects?

14 MR. ALLINDER: Object to the form of the  
15 question.

16 A. Well like every other layman I have my own  
17 opinion of lawyers.

18 MR. ALLINDER: But that's not what he asked  
19 you. Now let's respond to the question. It's too  
20 early in the afternoon to be going off on tangents  
21 here.

22 A. My -- my own understanding of the issue is  
23 whether the presence of lawyers by itself was  
24 improper or would influence an investigator in any  
25 particular way. My answer would be no. I -- at this

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 moment I don't have any other opinions about lawyer  
2 involvement.

3 Q. And so I think what I hear you telling me is  
4 that depending on the circumstances and the actual  
5 conduct involved, the lawyer's involvement may or may  
6 not result in any bias with respect to the eventual  
7 publication of a research study?

8 A. That's not what I said. It's hard for me to  
9 understand how the involvement of a lawyer could  
10 influence a research study in any way.

11 Q. Did you express that opinion to Mr. Allinder at  
12 the time that you were retained as a consultant in  
13 this matter?

14 A. I don't recall that the issue came up in the way  
15 that you're putting it.

16 Q. In other words, you can't conceive of any set of  
17 circumstances where the involvement of a lawyer in  
18 the funding or conduct of a research study might  
19 cause the results to be biased?

20 MR. ALLINDER: Object to the form of the  
21 question.

22 A. There's an assumption in my answer. My  
23 assumption here is that the investigator is an honest  
24 person who conducts his research with integrity, and  
25 therefore I can't imagine how a lawyer or a

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 politician or an executive or anyone else could  
2 influence the data that are obtained from a research  
3 study. On the other hand, if you or anyone else is  
4 prepared to show me a published paper that contains  
5 fraudulent data designed to deceive the public or to  
6 accommodate a lawyer, I would be willing to examine  
7 that and come to my own conclusions. Thus far in my  
8 analysis of many, many papers, I have not come across  
9 any situation where I felt that situation would  
10 obtain, but I am willing to consider any accusation  
11 that you may make against an individual investigator  
12 or against the journal in which the paper appeared or  
13 against the paper itself.

14 Q. But if I understand you correctly, your initial  
15 hypothesis starting out is that a researcher would  
16 resist any effort on the part of an attorney to  
17 influence the results of their study?

18 A. My assumption is that an investigator who is --  
19 degrees to undertake a research study will do so in  
20 an honest attempt to arrive at the truth of some  
21 question that he is investigating. Now there are  
22 accepted ways of attempting to arrive at the truth.  
23 Granted the truth is a philosophical concept and when  
24 we deal in science we don't deal with absolute truth,  
25 we deal with preponderance of evidence and things

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 like that, but there are occasionally instances of  
2 scientific misconduct. Those could also be called  
3 scientific fraud, those instances. And there are  
4 certain types of behavior that are considered  
5 evidence of scientific misconduct. As I've indicated  
6 before, they include plagiarism, misap --  
7 misappropriation of other people's data,  
8 falsification of data, fabrication of nonexistent  
9 data. There may be some others that don't come to  
10 mind. Now for an investigator to be biased in his  
11 approach to a research project by anyone, he would  
12 have to commit some form of scientific misconduct,  
13 because he would not be searching for the truth, he  
14 would be searching for some false data or false  
15 interpretation to accommodate the wishes of the  
16 sponsor or the lawyer, the executive, or what have  
17 you. Now I can't sit here and tell you that it is  
18 impossible that such a situation occurred. However,  
19 I am awaiting some documentation of unethical or  
20 fraudulent behavior. And if you have such evidence,  
21 I am prepared to change my mind about that specific  
22 instance, and I'm prepared to examine very closely  
23 the credentials of the investigator, his conduct, the  
24 quality of the paper, the conclusions, or any  
25 evidence that you may have that this was in any way

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 dishonest.

2 Q. And you'll let those chips fall where they may?

3 A. Let them fall where they may.

4 Q. Now the examples that you just cited of

5 scientific misconduct, would you agree those would be

6 among the most egregious examples of such misconduct

7 in connection with the publication of research

8 studies?

9 MR. ALLINDER: Objection to the form of the  
10 question.

11 A. I didn't say they were the most egregious.

12 Q. Among?

13 A. They are -- they are -- scientific misconduct

14 has been defined by a committee of the NIH, and I

15 think with reasonable precision.

16 Q. What's your understanding of the definition?

17 A. I gave them to you just previously. They're in  
18 the record.

19 Q. Did it include those examples of plagiarism and  
20 false data, those things?

21 A. Let -- let me repeat. As -- as I remember, and  
22 this may be incomplete, --

23 Q. Just your understanding.

24 A. -- my understanding of the guidelines to

25 identify scientific misconduct include plagiarism,

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 misappropriation of data; namely, taking someone  
2 else's data and calling it your own.

3 Q. Plagiarism?

4 A. It's a little different. You may be taking raw  
5 data that's never been published and incorporating it  
6 as part of your own data. Falsification of data.  
7 That means changing the numbers. And the last would  
8 be fabrication of data, meaning creation of  
9 experiments and data that were never done. Now that  
10 may not been complete, but that's my understanding of  
11 scientific misconduct.

12 Q. Are there some lesser degrees --

13 MR. ALLINDER: Excuse me, Dick. I have an  
14 emergency phone call. When you get to the point  
15 where you might be able to accommodate a short break,  
16 would you do so, please.

17 MR. GILL: Let's do it right now.

18 MR. ALLINDER: That's okay. I'm willing to  
19 wait a few minutes in order to accommodate the  
20 question.

21 MR. GILL: Is a couple minutes okay?

22 MR. ALLINDER: Yes. That's fine.

23 BY MR. GILL:

24 Q. To your understanding are there lesser degrees  
25 of scientific misconduct other than those that you

1 just mentioned?

2 A. To my knowledge the criteria for misconduct are  
3 not graded according to severity, they are either  
4 misconduct or they are not misconduct.

5 Q. So things falling outside the parameters of the  
6 situations that you just recited, assuming that your  
7 memory of this is correct, --

8 A. Yes.

9 Q. -- would not rise to the level of scientific  
10 misconduct as far as you're concerned?

11 A. You are trying to get a simple answer to a  
12 complex problem, and let me tell you what I mean by  
13 that. There are many gray areas in human affairs,  
14 and particularly in science error is frequent and is  
15 an integral part of the scientific process. Science  
16 proceeds in many ways through the creation of error,  
17 and error can be poor experiments or experiments in  
18 which -- which the circumstances represent the  
19 special case that cannot be generalized to other  
20 conditions, error can be in the interpretation of  
21 data, the conclusions that are derived from  
22 experiments may be erroneous, the basis of the  
23 experiment may have in it factors that are not  
24 realized at the time; for instance, inappropriate  
25 animals or animals that later turn out to have been

1 infected with something. There are many sources of  
2 error. There is no ethical stigma attached to error,  
3 error has to be corrected, but that is why important  
4 studies invariably have to be replicated. People do  
5 not accept in the scien -- people in the scientific  
6 community do not ordinarily accept a single paper as  
7 having revealed the truth. If it's a new gene, if  
8 it's a new biochemical pathway, if it's a new toxic  
9 effect, --

10 Q. I think I understand. That's okay.

11 A. -- if it's important it is replicated by other  
12 people because of the possibilities of error. So  
13 error and fraud or error and scientific misconduct  
14 have to be very rigorously separated, because error  
15 is the way that science goes, and I don't know of any  
16 scientist, including myself, who would want to be  
17 crucified for every error that has crept into his  
18 work over a lifetime career.

19 Q. But, Doctor, would it --

20 A. Please let me finish.

21 Q. I think I understand what you're saying and I'm  
22 not --

23 A. I understand, but you haven't let me finish.

24 Q. Go ahead.

25 A. So in between fraud or scientific misconduct and

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 unavoidable error are often gray areas where an  
2 investigator may have looked at the data a little  
3 more optimistically than he or she should where you  
4 may have -- may say that he or she really should have  
5 picked up the error but he was busy, he did it too  
6 fast, things like that. That's also not scientific  
7 misconduct. So when you asked me that question, and  
8 I'm returning finally to what scientific misconduct  
9 is, I think it's very important to be rigorous,  
10 virtually in the same way that you would be with a  
11 felony or something akin to that. I'm not an expert  
12 in the law. You have to be very, very rigorous  
13 because error is such an integral part of science.  
14 Q. Using that rigorous standard, would an act of  
15 intimidation by someone on behalf of a funding  
16 organization fall into the scientific misconduct  
17 category or into the error category?

18 MR. ALLINDER: Object to the form of the  
19 question?

20 A. Neither. I mean intimidation is -- has nothing  
21 to do with science. We're talking about -- I was  
22 talking to you about scientific error and scientific  
23 misconduct and the possible gray areas. It has  
24 nothing to do with intimidation. It doesn't --  
25 you're talking about something totally different.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. All right. And then we'll go to Mr. Allinder's  
2 phone call, but in other words, you don't feel  
3 prepared to evaluate whether or not acts of a funding  
4 organization with respect to the publication of  
5 research material would or would not constitute  
6 scientific misconduct?

7 A. Funding --

8 MR. ALLINDER: Excuse me. Object to the  
9 form of the question.

10 A. There's a fundamental lack of understanding  
11 here. Funding organizations do not perform science.  
12 They cannot have -- be guilty of scientific  
13 misconduct or scientifically proper conduct. They do  
14 not do experiments, they don't write papers, they  
15 don't subject themselves to peer-review. They are  
16 funding organizations. It's individual scientists  
17 who are either guilty of scientific misconduct, of  
18 error, or of doing correct experiments. Now when you  
19 come to the individual scientists, what you really  
20 want to know is would a scientist be intimidated by a  
21 funding organization into committing scientific  
22 misconduct? Well, I don't know enough about the  
23 nature of human beings and who is a coward.

24 Q. Some might and some might not?

25 A. Well, I think there are cowards in this world

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 who are easily intimidated. I think there are  
2 stronger people who could not be conceivably  
3 intimidated by anyone. But where you have so many  
4 sources of funding, many voluntary agencies, many  
5 government agencies, it's almost inconceivable to me  
6 that somebody would be intimidated by one funding  
7 source. Why should he be? If he has good work, he  
8 says, Nuts to you, I'll get funded by the National  
9 Cancer Institute or the American Heart Association or  
10 the Cystic Fibrosis Foundation, the American Lung  
11 Association. I mean the idea that a reputable and  
12 competent scientist could be intimidated is  
13 ludicrous.

14 Q. And that's the opinion with which you approached  
15 this particular problem?

16 MR. ALLINDER: Objection to the form of the  
17 question.

18 A. Well I didn't approach this problem because I  
19 had never thought about it before.

20 MR. GILL: Go ahead, Bill.

21 MR. ALLINDER: Thank you, I appreciate it.

22 MR. GILL: Sure.

23 MR. ALLINDER: I'll try to make it short.

24 (Recess from 1:44 to 1:55 p.m.)

25 BY MR. GILL:

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now Dr. Rubin, regardless of whether some  
2 attempted act of intimidation by a funding agency  
3 related to research constitutes scientific  
4 misconduct, it would certainly constitute misconduct;  
5 would it not?

6 A. You'd have to give me specific examples. It's a  
7 very broad statement, and I really would have to know  
8 the particulars.

9 Q. Well without spending the time to go through a  
10 number of particulars, is it your understanding that  
11 intimidation is an attempt to alter conduct?

12 MR. ALLINDER: Objection to the form of the  
13 question.

14 A. I mean this is philosophy now. You're -- you're  
15 asking me things which I don't consider myself an  
16 expert. This is --

17 Q. Just relay your understanding.

18 A. -- it's philosophy -- well it's philosophy or  
19 psychology, what is intimidation, and intimidation  
20 can be putting a gun to someone's head and  
21 threatening to blow his brains out or --

22 Q. If they don't do something that you want them  
23 to?

24 A. That's right. Or intimidation can be telling  
25 your wife that you're not going to take her out for

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 dinner if she doesn't do something for you, so I  
2 think we -- we should really not use such broad terms  
3 and get down to specifics, and I'm pleased to respond  
4 to any of your questions that I'm able to answer.

5 Q. But in both of your examples that you used the  
6 intimidating act was an attempt to alter some  
7 conduct; correct?

8 A. Well I think semantically intimidation is  
9 designed to make someone timid; that is, to extract  
10 some kind of a behavior such as giving him your  
11 money, doing something else.

12 Q. And -- and if a funding agency were to  
13 intimidate researchers by threatening to withhold  
14 funding if the researchers didn't alter in some  
15 manner the published research study, that would be  
16 misconduct; would it not?

17 MR. ALLINDER: Object to the form of the  
18 question.

19 A. Well, you're -- let -- let me see if I can  
20 clarify the question and ask you whether this is what  
21 you mean. Intimidation by a funding agency in -- in  
22 your lexicon is a threat to withhold funds designed  
23 to foster scientific misconduct or fraudulent  
24 behavior on the part of the recipient.

25 Q. Yes.

1 A. I do not approve of such activity.

2 Q. And when you mentioned that scientific research  
3 is an honest attempt to determine the truth, is that  
4 the way that you view the role of lawyers?

5 MR. ALLINDER: Object to the form of the  
6 question.

7 A. You want me to comment on lawyers' activities?

8 Q. Based upon your perception of the attitudes of  
9 lawyers, do you believe that lawyers representing  
10 clients are interested in an honest attempt to  
11 determine the truth?

12 MR. ALLINDER: Object to the form of the  
13 question.

14 A. I think sometimes they may be, but the history  
15 of the American legal system suggests that it is  
16 adversarial and is in many instances a game of shirts  
17 and skins. The lawyers who defended O. J. Simpson I  
18 believe were less interested in obtaining the truth  
19 than in having their client found innocent. In  
20 general I think that the function of a lawyer is to  
21 defend the interests of his client within the bounds  
22 of legal ethics. And in an adversarial system truth  
23 may sometimes suffer.

24 Q. The role of the lawyer in our system is  
25 basically to defend or advance the interests of the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 lawyer's client; --

2 MR. ALLINDER: Object to the form --

3 Q. -- true?

4 MR. ALLINDER: -- of the question.

5 A. Insofar as he follows appropriate procedure and  
6 is ethically correct. I think a lawyer would be  
7 behaving improperly if he denied what is true or  
8 stated what he knew to be false as true.

9 Q. And would you agree that a lawyer would also be  
10 acting improperly if he threatened a third party in  
11 advance of his client's interests?

12 MR. ALLINDER: Object to the form of the  
13 question.

14 A. I don't know. I think there are laws about  
15 threats, assault and battery, things like that. I  
16 don't think you're permitted to threaten people by  
17 law. I'm not a lawyer. I --

18 Q. I'm simply asking for your own understanding.

19 A. My understanding is that it's -- that it's not  
20 legal to -- to threaten people. They can sue you.

21 Q. Even on behalf of a client?

22 MR. ALLINDER: Object to the form of the  
23 question.

24 A. Well you're getting me into areas where I don't  
25 know much, but -- but I just intuitively suspect that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the law doesn't permit you to threaten people. You  
2 can go to jail for that, can't you?

3 Q. Now if a funding organization were to engage in  
4 some attempt to intimidate a research scientist with  
5 respect to what the scientist would actually publish  
6 from a given study, regardless of whether or not the  
7 attempt succeeded, such an attempt would not be  
8 consistent with full and fair disclosure of research  
9 studies, would it?

10 MR. ALLINDER: Object to the form of the  
11 question.

12 A. I think that's such a general question that it  
13 would profit from being more specific.

14 Q. It simply follows; does it not, Dr. Rubin, that  
15 if a research organization, a funding organization,  
16 attempted to intimidate one of their researchers to  
17 alter the content of a study, such an act would be  
18 inconsistent with full and independent disclosure of  
19 research results; true?

20 A. Well would you --

21 MR. ALLINDER: Excuse me. Excuse me.  
22 Object to the form of the question. Go ahead.

23 A. Would you tell me what you mean by  
24 "intimidate"?

25 Q. Threaten to withhold funding if the researcher

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 didn't alter the language of the research study in  
2 some manner.

3 A. Well that's laughable. I mean who would be  
4 intimidated by that? I cannot imagine any competent  
5 investigator being intimidated by an organization who  
6 -- that threatens to withhold funding. Any  
7 investigator that I know would tell them exactly what  
8 they can do with their money and tell him, you know,  
9 there's a lot of places I can get money, I'll, you  
10 know, --

11 Q. Dr. Rubin --

12 A. I'm trying to avoid profanity, as you understand  
13 what an investigator might tell such an  
14 organization. But that is hardly intimidation,  
15 because several things: One is it would become  
16 well-known to the scientific community in which case  
17 they wouldn't get application for grants. Second,  
18 they would become a laughing stock. Third, the  
19 investigator would -- would publish the paper as he  
20 saw fit anyway. Nobody is going to give into that  
21 kind of nonsense. And he'll get his money somewhere  
22 else. The whole scenario is ridiculous.

23 Q. So you come at this question from the viewpoint  
24 that no one, no researcher would ever been subject to  
25 being intimidated in that fashion?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 MR. ALLINDER: Object to the form of the  
2 question.

3 A. I do not know of any such instances.

4 Q. Now aside altogether from whether or not the  
5 researcher was or was not intimidated, the attempt to  
6 intimidate would be inconsistent with full and  
7 independent disclosure of research results from the  
8 standpoint of the funding organization; true?

9 MR. ALLINDER: Object to the form of the  
10 question.

11 A. It's very hard to understand what you mean. Do  
12 you mean if the investigator changed a paper?

13 Q. No, I don't care whether he does or doesn't,  
14 only that the funding organization makes the effort  
15 to get the researcher to alter the paper.

16 A. Well what does -- what are they trying to get  
17 him to do? Alter data? Change numbers?

18 Q. Alter any portion of the paper.

19 MR. ALLINDER: Object to the form of the  
20 question.

21 A. Well it depends what they're trying to get him  
22 to do. If they know that -- for whatever reason,  
23 that he is in serious error, they would be doing a  
24 public duty by --

25 Q. Threatening him?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. -- making -- making him aware of the error of  
2 his ways. That would be doing him a favor so he  
3 would not publish something that he would regret; it  
4 would be doing the public a favor because misleading  
5 information would not be out in the literature.

6 Q. There's a difference between making someone  
7 aware of a point of view and a threat; true?

8 A. That is correct.

9 Q. And in the situation where the making aware of  
10 the point of view is accompanied by a threat, that  
11 situation would be inconsistent with full and  
12 independent disclosure of research results; true?

13 MR. ALLINDER: Object to the -- object to  
14 the form of the question.

15 A. I think the way -- the way you put it, if I were  
16 going to -- to think of it in very simplistic terms;  
17 that is, you change the data or else I'm not going to  
18 fund you in the future regardless of the quality of  
19 your research, such a hypothetical scene would not be  
20 proper.

21 Q. And it would be inconsistent with any  
22 organizations that took a position that its  
23 researchers were completely independent and would  
24 fully disclose their results?

25 MR. ALLINDER: Object to the form of the

1 question.

2 Q. True?

3 A. Well, yes and no. In a strict sense possibly,

4 but if one looks at the organization, one looks at

5 the big picture; that is, the totality of the

6 operation of the organization, because any single

7 incident may have all kinds of special

8 characteristics about it. An organization that

9 consistently threatens researchers and that

10 consistently tries to make them conform to whatever

11 preconceived notions they have would not be acting

12 with full disclosure certainly and would be actually

13 acting in an inappropriate way. An organization that

14 has a long history of providing funds to independent

15 researchers and encouraging independent publication

16 in high-quality journals, that has a record of

17 supporting investigators of great reputation and high

18 integrity from institutions of unimpeachable quality

19 should be considered in the totality of its efforts.

20 If there are some isolated instances that do not

21 represent the character of the institution, they

22 should be considered in isolation. And I'll give you

23 an example. The NIH, that's the National Institutes

24 of Health, is one of the crowning achievements of the

25 United States government and its people in my

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 opinion, has resulted in many breakthroughs,  
2 scientific, medical, has done a great deal to  
3 alleviate human suffering. In the many grants that  
4 have been funded by NIH there are occasional or rare  
5 instances of unquestioned scientific misconduct in  
6 which --

7 Q. On the part of an NIH personnel?

8 A. -- on the part -- on the part of the  
9 investigator who received NIH funding. One cannot  
10 view the totality of the NIH program in the light of  
11 isolated and rare instances of scientific  
12 misconduct. There are instances of inappropriate  
13 conduct, rare instances, on the part of personnel  
14 within the NIH because a large organization, I  
15 believe people have misappropriated funds or done  
16 other things that are culpable, but one does not  
17 indict the NIH because of the rare actions of a few  
18 people who have done inappropriate things. In the  
19 same way the CTR, that has funded perhaps well over a  
20 thousand different grants, different investigators,  
21 has resulted in the publication, I don't know, of  
22 6000 papers by perhaps 5000 authors, if there is an  
23 isolated incident it should be considered on the  
24 merits of that incident. I'm not saying what the  
25 incident is or how it should be considered, but that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 should be considered as isolated if it is  
2 inconsistent with the general program of the  
3 organization.

4 Q. So as an investigator who's willing to let the  
5 chips fall where they may, you would be willing to  
6 excuse some incidences of threats or intimidations  
7 with regard to altering research results as long as  
8 they're isolated?

9 MR. ALLINDER: Excuse me. Object to the  
10 form of the question.

11 MR. PURDY: Object to the form. Misstates  
12 the testimony.

13 A. That's not what I said.

14 Q. You wouldn't be willing to excuse them even if  
15 they were isolated, would you, Dr. Rubin?

16 MR. ALLINDER: Object to the form of the  
17 question.

18 A. Not -- see, I'm not a judge or a jury. I'm not  
19 -- you know what Heinrich Heine said on his death  
20 bed when his friends told him to -- this is the time  
21 to ask for forgiveness or excuses. He said, "Don't  
22 worry, God will forgive me, 'Ces't son metier,'  
23 that's his business. So that's God's business. I  
24 would examine every incident that would be -- of  
25 which I would be made aware, and I make my own

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 judgment about the circumstances of that incident  
2 whether it was appropriate or whether it was  
3 inappropriate, but it -- whatever my judgment about a  
4 specific incident is, if, if there are two or three  
5 incidents out of a record of 1100 grants, I would  
6 have to consider them *suis generis*.

7 Q. Based on your understanding of the general  
8 nature of the 1100 grants you've worked on, and  
9 including the CTR special projects if you wish, how  
10 many dealt with smoke inhalation studies?

11 A. I don't remember.

12 Q. Approximately? 300? 400? 500?

13 A. I would be lying to you if I gave you a number.  
14 There were other smoke inhalation studies, but I have  
15 not analyzed the grants in that way and categorized  
16 them that way, so I don't know.

17 Q. Is it 1100 grants or 6000 grants?

18 A. I think it's about 1100 invest -- different  
19 primary -- principal investigators. The 6000 refers  
20 to the number of publications that acknowledge  
21 support from the CTR.

22 Q. Now out of those 1100 or so investigators, only  
23 a handful were assigned to conduct smoke inhalation  
24 studies; true?

25 MR. ALLINDER: Excuse me. Objection.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. PURDY: Object to the form.

2 A. These investigators were not assigned to do  
3 anything.

4 Q. Were funded.

5 A. They were -- these are for the most part what is  
6 called investigator-initiated grants; that is, they  
7 arise from the fertile minds and imaginations of  
8 individual investigators who then submit an  
9 application to do research according to their own  
10 inclinations. So they're not assigned to do  
11 anything.

12 Q. But Dr. Rubin, with respect to the number of  
13 investigators who were funded by CTR to conduct smoke  
14 inhalation studies, we're talking about a number  
15 that's less than 10; are we not?

16 A. Oh, I don't know.

17 MR. ALLINDER: Object to the form of the  
18 question.

19 A. I told you --

20 MR. ALLINDER: Excuse me. You need to  
21 pause for just a minute after the question, give me  
22 an opportunity to object if I see fit.

23 THE WITNESS: You know, I'm a man of bad  
24 habits.

25 MR. ALLINDER: That's okay.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 THE WITNESS: That's what my wife tells me.

2 MR. ALLINDER: The court reporter will

3 appreciate us not talking over each other.

4 Q. The question was: Is the number of

5 investigators who were funded by CTR to conduct smoke

6 inhalation studies more or less than 10?

7 MR. PURDY: Object to the form, asked and

8 answered.

9 A. I would not be truthful if I answered that

10 question yes or no because I simply don't have the

11 answer. I'm prepared to derive it by studying grants

12 all over again, but I --

13 Q. But you haven't done that so far?

14 A. I have not done that.

15 Q. And we know that two of the investigators who

16 did complain, who put forth allegations that their

17 research was subject to some type of censoring by the

18 CTR, were both doing smoke inhalation studies;

19 correct, Homburger and Dr. Henry?

20 A. Well, since I brought up the subject of

21 investigator-initiated grants, remember that those

22 two were not investigator-initiated, they're

23 contracts, and a contract is not an

24 investigator-initiated grant, it's quite the

25 reverse. The very nature of a contract is that the

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 organization or company or the government or whatever  
2 it is wants to find the answer to some question or  
3 develop some kind of a machine, some purpose  
4 associated with the goals of the institution, and  
5 then they contract with someone to do that work. So  
6 in that sense it's not -- it's different from  
7 investigator-initiated research grant.

8 Q. Would you be surprised, Dr. Rubin, if Dr.  
9 Homburger's studies on smoke inhalation started out  
10 as grants and then were converted into contracts by  
11 CTR?

12 MR. ALLINDER: Object to the form of the  
13 question.

14 A. First, the history of that investigator, as I  
15 understand it, is being supported by grants. Whether  
16 the term "conversion" is correct or whether the term  
17 that he was then given a contract, I can't tell you  
18 that. I -- I don't know the ins and outs of the  
19 administrative aspects of it. Suffice it to say, he  
20 was awarded a contract to develop a model of  
21 inhalation -- smoke inhalation-induced cancer of the  
22 lung.

23 Q. Are you familiar with an investigator by the  
24 name of Dr. Lutenberger from Switzerland?

25 A. Who?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Leuchtenberger.

2 A. Leuchtenberger?

3 Q. Leuchtenberger.

4 A. Leuchtenberger.

5 Q. That's the one.

6 A. There's two.

7 MR. ALLINDER: Is that an affirmative  
8 answer?

9 Q. There's a Doctor and Mrs. Dr. Leuchtenberger.

10 A. Yes, they're both -- the Leuchtenbergers were a  
11 husband and wife team in Switz -- working in  
12 Switzerland.

13 Q. And were they --

14 A. Actually I believe they had worked previously in  
15 Boston, then went to Lausanne, is it?

16 Q. Did they receive some grants from CTR?

17 A. I believe they did, yes.

18 Q. And they did some smoke inhalation studies  
19 related to mice?

20 A. Yes.

21 Q. And they complained that their research was  
22 censored in some way by CTR --

23 MR. ALLINDER: Object.

24 Q. -- or its predecessor?

25 MR. ALLINDER: Object to the form of the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 question.

2 A. I am not really aware of the -- any precise  
3 complaints on their part. I have not, as I recall --  
4 without any notes or documents in front of me, I  
5 don't recall seeing any letter from them in which  
6 they complained about being censored.

7 Q. Have you seen any document that contained a  
8 reference to complaints by Doctors Leuchtenberger?

9 MR. ALLINDER: Object to the form of the  
10 question.

11 A. I --

12 Q. Regarding CTR censorship?

13 MR. ALLINDER: Same objection.

14 A. I have -- I recall the name of the  
15 Leuchtenbergers being mentioned, but I need to have  
16 my memory refreshed as to the precise documentation  
17 by the Leuchtenbergers of what their complaint was.

18 Q. Do you recall complaints by a Dr. Auerbach with  
19 respect to censorship by CTR?

20 MR. ALLINDER: Object to the form of the  
21 question.

22 A. Well I knew Oscar Auerbach personally. I'm not  
23 a -- I don't recall that, but --

24 Q. Do you recall that Dr. Auerbach did grant  
25 research funded by CTR?

1 MR. ALLINDER: Object to the form of the  
2 question.

3 A. He -- he worked on beagles who were given smoke  
4 inhalation through tracheostomies.

5 Q. So he was also engaged in research dealing with  
6 smoke inhalation in animals?

7 MR. ALLINDER: Object to the form of the  
8 question.

9 A. He was.

10 Q. And -- and you're indicating you don't recall  
11 that he complained of censorship on the part of CTR  
12 with respect to the result of his studies?

13 MR. ALLINDER: Object to the form of the  
14 question.

15 A. I have to have my memory refreshed by the  
16 document. If you could provide it to me, I'll  
17 comment on it.

18 Q. Now, do you appreciate that smoke inhalation  
19 studies that established a link between smoke and  
20 disease would not be good information as far as the  
21 tobacco companies are concerned?

22 MR. ALLINDER: Object to the form of the  
23 question.

24 A. I don't think that they would be happy to hear  
25 the news at that time.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And that type of a study, a smoke inhalation  
2 study with an animal that showed the development of  
3 cancer, would be the type of study that would confirm  
4 epidemiological results establishing the strong  
5 association between smoking and different forms of  
6 cancer; true?

7 MR. ALLINDER: Object to the form of the  
8 question.

9 A. Well it wouldn't be different forms of cancer.  
10 It would be lung cancer.

11 Q. Whatever the type of cancer was that the -- that  
12 the animals developed, whether it was lung cancer or  
13 laryngeal cancer, whatever kind, it would --

14 A. Well how would it be laryngeal cancer if they  
15 had a tracheostomy?

16 Q. Well I'm referring now to the hamsters that we  
17 talked about this morning.

18 A. I thought you were talking about Auerbach.

19 Q. I was. Auerbach's got the beagles; correct?

20 A. Yeah.

21 Q. Okay. And Dr. Homburger's got the hamsters;  
22 correct?

23 A. Well they weren't contemporaneous, were they?

24 Q. No. But Dr. Homburger did research for CTR  
25 dealing with smoke inhalation for hamsters.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Correct.

2 Q. And he thought he had developed laryngeal --

3 laryngeal cancer during his studies in the hamsters?

4 A. Well I thought he thought that the hamsters had

5 developed it, --

6 Q. Yes.

7 A. -- not that he had developed it.

8 Q. Well that he had induced the development --

9 A. Oh.

10 Q. -- by forcing the hamsters to inhale the smoke.

11 A. Yes, that's correct.

12 Q. And Dr. Auerbach thought that his beagles had

13 developed some form of cancer as a result of inhaling

14 the smoke?

15 MR. ALLINDER: Objection, assumes facts not  
16 in evidence.

17 Q. True?

18 A. I don't know. Auerbach -- what Auerbach showed

19 and what is accepted was squamous metaplasia of the

20 bronchi. Whether he developed -- whether the beagles

21 developed true invasive carcinoma or whether the

22 lesions were actually -- in the bronchi were actually

23 carcinoma in situ is I think an iffy matter, very --

24 it's really iffy, was not replicated, I think people

25 tried, were unable to replicate it, and even

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Auerbach's pictures and data have -- have been  
2 criticized as inconclusive.

3 Q. But regardless of the criticism, Auerbach  
4 thought that the beagles had developed cancer;  
5 correct?

6 A. I'm not sure that he remained with that  
7 conviction. I think at one time he thought so, but  
8 --

9 Q. And Dr. Sommers of the CTR disagreed?

10 MR. ALLINDER: Object to the form of the  
11 question.

12 A. I believe he disagreed.

13 Q. Acting in the role of scientific director of the  
14 CTR?

15 MR. ALLINDER: Object to the form of the  
16 question.

17 A. I don't know in what capacity, you know, whether  
18 -- Sommers saw the slides, I believe, or the  
19 pictures, I don't recall, either saw the pictures or  
20 the slides, and he disagreed -- with -- with the  
21 diagnosis of cancer.

22 Q. And Sommers disagreed with the diagnosis by Dr.  
23 Homburger of laryngeal cancer in the hamsters; true?

24 A. That is true.

25 Q. And Sommers disagreed with the diagnosis of a

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 higher risk of cancer through the lung inhalation  
2 studies conducted by Dr. Henry?

3 MR. ALLINDER: Object to the form of the  
4 question.

5 A. I think "diagnosis" would not be the word you  
6 would really want to use. It would be --

7 Q. Findings?

8 A. -- conclusion or interpretation by Dr. Henry.  
9 Dr. Sommers in that respect maintained that one  
10 should abide by the commonly-accepted criteria of the  
11 biomedical community.

12 Q. And the scientific director of the CTR disagreed  
13 with the findings of the Leuchtenbergers with respect  
14 to their smoke inhalation studies regarding mice;  
15 true?

16 A. I don't -- I don't recall that.

17 MR. ALLINDER: Excuse me. Excuse me.  
18 Object to the form of the question.

19 A. I don't recall that. You'll have to show me the  
20 documents.

21 Q. Now how many CTR special projects did you review  
22 during the course of your investigation?

23 A. Well I reviewed all of those that were listed in  
24 the compendium of special projects, I believe had  
25 been presented to the Waxman Subcommittee of the



- 1 House of Representatives and --
- 2 Q. Do you recall approximately how many there were?
- 3 A. Oh, I don't know, 100 or some odd -- something
- 4 like that.
- 5 Q. Does 120 sound familiar?
- 6 A. I'm not going to argue about the number, because
- 7 I don't remember. But --
- 8 Q. Was that good research in your view?
- 9 A. But I want to complete my answer so that I'm not
- 10 accused of withholding information later on.
- 11 Q. Please do so then.
- 12 A. I --
- 13 Q. As long as it's responsive.
- 14 A. Well I think you will find it responsive. I
- 15 asked for and received copies of the papers that had
- 16 been produced by -- and that -- or copies of papers
- 17 that had been published by recipients of CTR special
- 18 grants. Now what I can't guarantee is that I have
- 19 read each and every one of their papers or that there
- 20 are not papers out there that I didn't receive.
- 21 Q. Did you read most of the papers?
- 22 A. Yes.
- 23 Q. And approximately how many papers were you
- 24 given? Was that about 100 or so?
- 25 A. Well I think more.

1 Q. Now as I understand it from your report, you  
2 don't find anything unusual about the fact that  
3 industry might fund some research that might have  
4 commercial value to the industry?

5 A. Done all the time.

6 Q. And did you find that any of the special project  
7 papers that were published would fall into the  
8 category of having some commercial value to the  
9 sponsors of the research?

10 A. You have to explain to me commercial value. Do  
11 you mean a device was invented or a type of cigarette  
12 was invented that they could sell?

13 Q. Commercial value of any kind as you use that  
14 term in your report?

15 MR. ALLINDER: Object to the form of the  
16 question.

17 A. Well, commercial value to defend the interests  
18 of the industry, to dispel let's say questionable  
19 information derived -- in the literature or what have  
20 you, I -- I guess there was. I didn't look at them.  
21 I didn't read those papers with that in mind.

22 Q. Well, was it your impression that these special  
23 projects were undertaken specifically at the behest  
24 of the tobacco industry?

25 A. Definitely.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And that obviously then the tobacco industry had  
2 some specific reason why it wanted these research  
3 studies funded?

4 A. That is my understanding.

5 Q. And it was your understanding that the tobac --  
6 tobacco industry perceived some commercial value to  
7 the conduct of this research?

8 MR. ALLINDER: Object to the form of the  
9 question.

10 A. Well, my problem is with the term "commercial".  
11 I -- I would say that they perceived some value to  
12 the industry, and I'd have to leave it at that.

13 Q. Okay. Some value to the industry and to each of  
14 its members?

15 A. I can't tell you. I don't know.

16 Q. Is it your understanding that these special  
17 projects when they were funded by the tobacco  
18 industry would be paid for by the individual  
19 tobacco companies in some proportion to their market  
20 shares?

21 A. I don't know.

22 Q. Did you have any understanding of how the  
23 tobacco industry was paying for these special  
24 projects?

25 A. To my knowledge they are paying for them but not

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 out of the budget of the SAB program.

2 Q. They were paying for these special projects by  
3 essentially issuing checks to an account or to their  
4 lawyers so that the projects could be funded?

5 A. Well, you know more about that than I do.

6 Q. Is that your understanding?

7 A. Well I don't know if they sent cash in marked  
8 envelopes or whether they sent checks. I mean you're  
9 asking me questions I haven't any knowledge of.

10 Q. Well it's an interesting subject, we'll look  
11 into that possibility.

12 (Laughter.)

13 Q. Now the papers that were published as a result  
14 of these special projects were obviously available to  
15 all of the tobacco companies, right?

16 A. They were in the public domain.

17 Q. And one would expect that if -- if a company was  
18 paying for a portion of the study they were at least  
19 going to get a copy of the paper that came out of the  
20 study?

21 MR. ALLINDER: Object to the form of the  
22 question.

23 Q. Fair assumption?

24 MR. ALLINDER: Object to the form of the  
25 question?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Not a fair assumption, it's in the public  
2 domain, they have xerox machines, they can copy it.  
3 I don't really know whether the grantees were  
4 requested to send reprints to the companies or  
5 whether they were not.

6 Q. Did the --

7 A. But I do know that they were encouraged to  
8 publish their findings.

9 Q. These were all done pursuant to contracts, were  
10 they not?

11 MR. ALLINDER: Object to the form of the  
12 question.

13 A. They were called special grants.

14 Q. In each instance wasn't there a contract between  
15 the funding organization and the researcher?

16 MR. ALLINDER: Object to the form of the  
17 question.

18 A. I don't really know the answer, whether it was  
19 in the form of a -- a defined contract or whether a  
20 special grant had some other device.

21 Q. Was it your understanding that the investigators  
22 or researchers who were funded for these special  
23 projects could publish their results regardless of  
24 whether the tobacco companies or their agents wanted  
25 the researchers to do that?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. It is my understanding that they were encouraged  
2 to publish their results and to acknowledge funding  
3 by CTR special projects.

4 Q. Assuming that they were encouraged to  
5 acknowledge funding by CTR special projects if they  
6 did publish, do you have any specific information as  
7 to whether they were in all regards free to publish  
8 regardless of the objections of the tobacco companies  
9 that were paying for this research?

10 MR. ALLINDER: Object to the form of the  
11 question.

12 A. I believe they were free to publish.

13 Q. And is part of your opinion that you found no  
14 impropriety with these special projects based upon  
15 the assumption that in each event the researcher was  
16 at liberty to publish or not publish as the  
17 researcher saw fit?

18 MR. ALLINDER: Object to the form of the  
19 question.

20 A. I have no way of knowing the data that an  
21 investigator chose not to publish. We in our group  
22 probably publish 20 percent of the data that we  
23 generate.

24 Q. I understand that.

25 A. Maybe -- maybe less.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Just free to publish or not publish.

2 A. Right. No, what I'm saying is what I am really  
3 familiar with is what was published, and as far as I  
4 know they were free to publish whatever they wanted.

5 Q. And in reviewing what was published, which is  
6 all you've had access to regarding these special  
7 projects, you found considerable commercial value  
8 there for the tobacco industry?

9 MR. ALLINDER: Object to the form of the  
10 question.

11 A. Well I -- I don't think I ever said that,  
12 commercial value for the tobacco industry. I -- I  
13 don't recall using such an expression. You may want  
14 to refresh my memory, but I don't recall saying that.

15 Q. Isn't there an expression of that concept in  
16 your report?

17 A. That special projects were of -- that the  
18 results of special projects studies were of  
19 commercial value to the companies? Please show me  
20 where I say that.

21 Q. Do you recall indicating that companies often  
22 fund -- industries or members of industries often  
23 fund research because they expect to gain commercial  
24 value from it?

25 A. Well it may or may not. I would not be

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 surprised to learn, for instance, that duPont funds  
2 research on ground pollution from pesticides. I'm  
3 giving you an example. They may or may not. I have  
4 -- you know, that's not an area that I know anything  
5 about, but it wouldn't surprise me because they have  
6 to comply with all kinds of regulations. They may  
7 fund all kinds of research which might assist them in  
8 complying with government regulations. No, the very  
9 -- the fact that something is funded doesn't mean  
10 it's going to have commercial application.

11 Q. Often industries fund research with the  
12 expectation that the results will be of commercial  
13 value; true?

14 A. I would think so.

15 Q. Now in the CTR special project studies that were  
16 published and which you've reviewed, did any of them  
17 deal with the etiology of the diseases that have been  
18 linked to cigarette smoking?

19 MR. ALLINDER: Object to the form of the  
20 question.

21 A. Yes.

22 Q. So a number of those CTR special projects fell  
23 into that same broad category that you indicate the  
24 grant program focused on after 1970?

25 A. Some of them.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 MR. ALLINDER: Excuse me. Object to the  
2 form of the question.

3 A. Some of them did, yes.

4 Q. And you regarded research into the etiology of  
5 the diseases that have been linked to cigarette  
6 smoking as valuable scientific information; true?

7 A. That's true.

8 Q. And I take it it would be valuable scientific  
9 information to the tobacco industry as well?

10 A. It would be valuable to everyone who's  
11 interested in health.

12 Q. And instead of each of the tobacco companies  
13 attempting to develop that type of information on its  
14 own, in these instances they were pursuing that goal  
15 collectively; correct?

16 A. That's my understanding.

17 Q. And each knew what the results of the studies  
18 were, or each had the opportunity to know?

19 A. I would assume they did.

20 Q. And all of the tobacco companies --

21 A. Well, wait, everybody had the opportunity to  
22 know. Remember the results were published in the  
23 public domain.

24 Q. And all of the tobacco companies had technical  
25 personnel, employees, that were assigned to the CTR

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 as some type of an advisory committee?

2 MR. PURDY: Objection.

3 Q. Correct?

4 MR. PURDY: Objection to the form, lacking  
5 foundation.

6 A. I think they had.

7 Q. And certainly you would expect that those  
8 technically-trained employees of the cigarette  
9 companies that were assigned to duty with the CTR,  
10 they would be aware of these publications that dealt  
11 with the etiology of diseases that were linked to  
12 tobacco smoking?

13 MR. ALLINDER: Object to the form of the  
14 question.

15 A. They had the opportunity. Whether they availed  
16 themselves of the opportunity, I'm not in a position  
17 to say.

18 Q. Now have you ever attempted to determine if  
19 there were any special projects that the CTR  
20 prohibited the investigator from publishing?

21 A. That has not come to my attention.

22 Q. Were there any special projects that you know of  
23 that were handled through the CTR but not handled  
24 through the scientific director?

25 A. It's my understanding that with regard to

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 special projects the CTR functioned in an  
2 administrative way because they had the apparatus in  
3 place to disperse funds, and so that the disbursement  
4 personnel or people who were responsible for  
5 disbursing funds to investigators of the CTR, their  
6 organization, handled those funds. I believe that  
7 the special projects before they were awarded were  
8 reviewed by the scientific director of the CTR who  
9 commented upon the scientific feasibility and  
10 relevance of a study.

11 Q. Commented to whom?

12 A. Well to whoever initiated the special project.

13 Q. To the tobacco company that initiated the  
14 special project?

15 A. Well I don't know if it was one or more, but to  
16 the -- to the people who are responsible for  
17 initiating the project and reported whether it was  
18 scientifically feasible, relevant, proper, and  
19 whatever it is. And then if the scientific director  
20 thought that the project was an appropriate one, it  
21 would then be funded through funds not in the SAB  
22 program but administered through the CTR.

23 Q. Is it your understanding that any of the  
24 proposed special projects that the scientific  
25 director did not think were scientifically relevant

1 were ever funded nevertheless?

2 A. I don't know.

3 Q. Have you seen any information on the subject of  
4 lawyers representing the cigarette industry making  
5 funding decisions with respect to certain types of  
6 special projects?

7 A. Special projects were initiated by lawyers or  
8 executives of the tobacco companies. Funding would  
9 come from those sources, so that -- that's what I  
10 know about it.

11 Q. And if the -- are you aware of a category of  
12 special projects that were handled by lawyers after  
13 the scientific director of the CTR indicated that he  
14 was not comfortable with the scientific relevance of  
15 the project?

16 MR. ALLINDER: Object to the form of the  
17 question.

18 A. I -- I don't recall that, no.

19 Q. You've never been shown any of those special  
20 projects or any information about those special  
21 projects?

22 MR. ALLINDER: Object to the form of the  
23 question.

24 A. Well with the proviso that I don't have any  
25 notes or documents in front of me, I don't recall

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 seeing such projects.

2 Q. And your memory as you sit here today, Dr.

3 Rubin, is that the only CTR special projects that you  
4 have any specific information on are those which were  
5 published?

6 A. No.

7 MR. ALLINDER: Object to the form of the  
8 question.

9 A. That's not true. I -- the compendium of special  
10 projects presumably included a list of all of those  
11 that were funded, but not every project resulted in a  
12 publication, which is not different from NIH, let's  
13 say. Not every grant they fund results in a  
14 publication.

15 Q. What was the ratio of -- of those that had been  
16 funded in relation to those that were ultimately  
17 published? The approximate ratio?

18 A. The approximate ratio of papers to grants?

19 Q. Yes. With respect to these special projects,  
20 this 100 to 120 special projects that were referenced  
21 in this compendium that you reviewed.

22 A. Well I don't have that number available. I  
23 would say it's -- I would guess that it's more than  
24 1, the ratio.

25 Q. Guess that more than 1 of the 120 or so got

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 published?

2 A. I said the ratio.

3 Q. One-to-one?

4 A. That is --

5 Q. I'm sorry, I misunderstood.

6 A. That the ratio of papers to grants was more than

7 1.

8 Q. I guess I'm still not following the way that

9 you're using those statistics.

10 A. I'm using -- this is English.

11 Q. But --

12 A. This is -- ratio -- ratio means number of grants

13 -- of papers divided by the number of grants.

14 Q. Okay.

15 MR. ALLINDER: I think you're

16 miscommunicating a little bit.

17 Q. And I'm familiar with that fraction. What would

18 be the numerator of that fraction, the number of CTR

19 special projects that were published?

20 A. The project isn't published. A paper is

21 published. So the number of papers published by

22 recipients of CTR special projects divided by the

23 number of investigators funded by CTR special

24 projects.

25 Q. I see what you're doing now, where you're

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 getting over 1, but that's not the question I was  
2 trying to ask. If there were approximately 120  
3 projects that were funded, if there were  
4 approximately 120 studies that were funded under the  
5 special projects program, of that 120 studies  
6 approximately how many got published?

7 A. I don't know the answer.

8 MR. ALLINDER: I'm going to object to the  
9 form.

10 A. I don't know the answer to that. I haven't  
11 analyzed the data in that manner. Remember that  
12 there were a number of special projects that were not  
13 research projects, they were fellowships for travel.  
14 They had funds to compile certain types of data, give  
15 reports. There were funds for symposia.

16 Q. And none of those had anything to do with the  
17 relationship between tobacco smoking and disease, did  
18 they?

19 MR. ALLINDER: Object to the form of the  
20 question.

21 A. Well I don't think so. I mean I -- I --

22 Q. The travel.

23 A. The travel, they were -- the travel was for  
24 investigators, let's say who are junior investigators  
25 often who were working with senior investigators

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 involved. I believe that, for instance, as I recall,  
2 there were some funds for an investigator, a young  
3 investigator who worked with Alvan Feinstein at Yale  
4 who was involved in statistical evaluations of the  
5 relationship of smoking to cancer. There were funds  
6 for symposia on twin studies that -- in Sweden.  
7 That's clearly of importance to the development of  
8 cancer. And we even know now even more how important  
9 that is. So not all of the projects of these 120  
10 would be expected to result in a research  
11 publication.

12 Q. I understand that. And you've reviewed a fair  
13 number, if not all, of the studies that were handled  
14 under CTR special projects that were published;  
15 correct?

16 A. That's correct.

17 Q. How many did you review about? 5? 10? 50?

18 A. Oh, no. You know, I don't -- I didn't keep  
19 record of it that way. I -- I would guess they're at  
20 perhaps 100.

21 Q. So you believe that there -- and were these all  
22 research studies, the hundred or so that you  
23 reviewed?

24 A. Well a lot of them were research studies, but  
25 some of them --



1 Q. I don't care about the ones that might deal with  
2 a study on travel.

3 A. No, no, I --

4 MR. ALLINDER: Objection.

5 A. Allow me to finish what I say and you will been  
6 educated as to my opinions.

7 Q. Well let me just rephrase and -- and start all  
8 over because I think we're getting a little bit off  
9 track.

10 MR. ALLINDER: I do too.

11 Q. Of the studies that you reviewed that you were  
12 given to understand were CTR special projects, about  
13 how many of those were research papers dealing with  
14 the subject of health?

15 A. Research papers that I reviewed would fall into  
16 roughly three categories. One was research papers in  
17 peer-review journals. Another would be editorials,  
18 reviews relating to the subjects of the special  
19 project. And the third would be chapter in books or  
20 books that were resulting from symposium, things like  
21 that.

22 Q. Approximately how many were peer-reviewed  
23 publications?

24 A. A large number. I don't recall how many.

25 Q. More than 50?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. But -- I think so, yes.

2 Q. And since they were published it goes without  
3 saying that the funding organization was apparently  
4 comfortable with the publishers -- with the  
5 researchers getting their results published?

6 MR. ALLINDER: Object to the form of the  
7 question.

8 MR. PURDY: Objection.

9 Q. Well let me withdraw it. Let me withdraw the  
10 question.

11 With respect to those peer-reviewed publications  
12 that you reviewed did you see any evidence that the  
13 sponsors of the study didn't want them to be  
14 published?

15 A. There wouldn't -- wouldn't been any indication  
16 of that in the papers that are published. It does  
17 not carry a note with it ordinarily that CT -- that  
18 the tobacco companies are particularly happy to see  
19 this paper published or that they're particularly  
20 unhappy.

21 Q. That's why I asked it as a broader question.  
22 Among all the information that you've looked at in  
23 connection with your consulting work on this case,  
24 did you see anything that indicated to you that the  
25 tobacco companies were against the publication of any

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of those peer-reviewed studies that were funded under  
2 special projects?

3 A. Well, I don't know that I can answer it that  
4 narrowly. I know that there were some people in the  
5 tobacco industry who were not happy with the  
6 publication of data by grantees and there were other  
7 people who were entirely pleased. I think there was  
8 a difference of opinion.

9 Q. I'm talking about special projects now.

10 A. That's why I say I'm not sure that I can narrow  
11 the -- what I know down to special projects. I can  
12 say in general I think there was a difference of  
13 opinion regarding the usefulness of publications  
14 resulting from CTR and/or special projects. I -- I  
15 never -- I didn't refine my analysis to separate  
16 that.

17 Q. With respect to the studies that were published  
18 in peer-review publications that were funded by  
19 special projects, did the researcher's interpretation  
20 of the data lead away from the tobacco  
21 smoking-disease causation hypothesis?

22 A. Sometimes yes and sometimes no.

23 Q. How many times no? By "no" you mean that the --  
24 that the author's interpretation of the data  
25 indicated that there was a cause and effect

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 relationship between tobacco smoking and disease?

2 MR. ALLINDER: Object to the form of the  
3 question.

4 A. Well there were such papers. I didn't count the  
5 number that were adverse to tobacco and those that  
6 were more supportive of the tobacco position.

7 Q. Can you think of any as you sit here today that  
8 were adverse to the interests of the tobacco  
9 companies that sponsored that research conducted with  
10 special product -- project funding?

11 A. Well sure.

12 Q. Please tell me. Whichever ones you can think of  
13 that fall into that category?

14 A. Well I think Bill Gutstein's papers dealing with  
15 the central nervous system influence on  
16 atherosclerosis were highly suggestive that the  
17 central nervous system or the autonomic nervous  
18 system could influence the development of  
19 atherosclerosis with the inevitable implication that  
20 drugs, such as nicotine, that had profound effects on  
21 the central nervous system, the autonomic nervous  
22 system, therefore could influence the development of  
23 atherosclerosis through such mechanisms.

24 Q. Was nicotine specifically mentioned --

25 A. I don't --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. -- in his publication?

2 A. I don't remember.

3 MR. ALLINDER: Excuse me, you need to let  
4 him finish before you respond, and I hope, Dick, you  
5 will let Dr. Rubin finish before you start your next  
6 question.

7 THE WITNESS: He's a hard task master.

8 MR. ALLINDER: I'd just like that on the  
9 record.

10 Q. Any other papers that come to mind that fall  
11 into the category of results that were adverse to the  
12 interests of the tobacco company?

13 A. Well to me some of Sterling's work on sick  
14 building syndrome did demonstrate that tobacco smoke  
15 in one area could permeate other areas. His -- I  
16 mean it's a complicated issue, and the concentrations  
17 in one area were not necessarily the same, not  
18 uniform, but there is a demonstration there that  
19 tobacco smoke can be detected at some distance, and  
20 anyone who wanted to use that information certainly  
21 could have.

22 Q. Did Sterling make a finding in this paper that  
23 tobacco smoke environmentally present would cause  
24 disease?

25 A. I don't think Sterling is in the area of disease

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 as much as he is in the statistical and the  
2 engineering part of -- and the chemical detection  
3 part of those studies.

4 Q. So he simply documented the presence of-- of  
5 smoke in buildings?

6 A. Well, yes, he did, and I'm not an expert in sick  
7 buildings and how particulates in smoke are  
8 distributed so I can't say that I have analyzed all  
9 of those papers in the same way that I would areas  
10 that I understand better, but certainly he documented  
11 that smoke will travel from its source to different  
12 areas. I think it's an example of a fair-minded  
13 approach, and not -- some of the -- some of his  
14 findings were perhaps helpful to the industry, some  
15 of his findings were perhaps not helpful. I won't  
16 judge that particular issue.

17 Q. Any other research paper that comes to mind that  
18 was funded by special projects that you believe  
19 reached results that were adverse to the interests of  
20 the tobacco companies?

21 A. Well I have to review the -- my notes on that.

22 Q. None others that come to your mind at the  
23 present time?

24 A. Not at this time.

25 Q. Now if --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. PURDY: Could we take just five  
2 minutes?

3 MR. GILL: Yeah, that's fine.

4 MR. ALLINDER: And while we're doing that  
5 can we get a count on our clock today.

6 COURT REPORTER: Five hours and one  
7 minute.

8 (Recess from 3:06 to 3:13 p.m.)

9 BY MR. GILL:

10 Q. Dr. Rubin, you mentioned that your understanding  
11 was that CTR asked the researchers who were funded  
12 under special projects to if they acknowledged their  
13 funding indicate that it came from CTR special  
14 projects; correct?

15 A. That's correct.

16 Q. Now I think you also told me that the type of  
17 advisory review board that the CTR had in the SAB was  
18 not at all unusual with regard to funding  
19 organizations?

20 A. That's correct.

21 Q. If somebody were reading a published study that  
22 contained a -- an acknowledgment of funding through  
23 CTR special projects, would you expect that they  
24 would be able to deduce from that label that the  
25 project had been funded without any consideration by

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the CTR's review board?

2 MR. ALLINDER: Object to the form of the  
3 question.

4 A. Well, first, very few scientists read the  
5 acknowledgments, that's not the kind of think that's  
6 of any interest to most scientists, and  
7 acknowledgments are put down mostly for the funding  
8 agencies, so, for instance, on my own grant I will  
9 list the NIH numbers of the grants that supported  
10 that particular paper, that's what most people do,  
11 nobody reads them or pays attention to them because  
12 they're of no interest. But what's important is the  
13 paper, it's not the acknowledgment. Now in answer,  
14 direct answer to your question, even among those who  
15 might look at the acknowledgments there would be a  
16 very small minority who would have any idea of the  
17 mechanism by which grants are funded who would know  
18 that there is a scientific advisory Board or that  
19 priorities are established or how funding decisions  
20 are made. So if -- you would then get down to a  
21 small population of people who would read that paper  
22 who had particular knowledge of the inside workings  
23 of the CTR, in which case they might or might not  
24 know the difference between special projects and SAB  
25 spon -- or SAB program. You probably would be

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 talking about a half a dozen people.

2 Q. And that's your considered opinion on that  
3 subject?

4 A. I don't know how considered it is. It's my  
5 opinion.

6 Q. I think I heard two opinions expressed there.  
7 One was that very few readers of scientific journals  
8 pay any attention to any acknowledgment of funding.

9 A. That's correct.

10 Q. And is your opinion on that subject based upon  
11 some type of a study that you've done?

12 A. Yes.

13 Q. And how many people have you consulted for  
14 purposes of your study on that subject?

15 A. Half a dozen.

16 Q. Is that the extent of your study?

17 A. That's it.

18 Q. And is your opinion on that subject based upon  
19 anybody else's study that you've reviewed?

20 A. Look, I'm being facetious. Nobody has --

21 MR. ALLINDER: Please. Please don't be.

22 THE WITNESS: No. No, no, no.

23 MR. ALLINDER: Okay. Please don't be  
24 facetious.

25 THE WITNESS: Well let me explain to you in

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what way I'm facetious.

2 MR. ALLINDER: Okay.

3 THE WITNESS: I have consulted --

4 MR. ALLINDER: Okay.

5 THE WITNESS: -- a few people in our  
6 department on this very issue. I've just said to  
7 them because of the encouragement to acknowledge  
8 funding, I did ask a number of people in our  
9 department who are well-known investigators, Do you  
10 read the acknowledgments? And they all laughed at  
11 me. Of course not. Because they know very well that  
12 neither I nor they nor anyone else is really  
13 interested unless you have some particular concern if  
14 you're an administrator of an NIH program or what  
15 have you. So in that respect I am not being  
16 facetious. What I'm being facetious is in calling it  
17 a study. I mean to talk to half a dozen people is  
18 not a study. And I apologize for any levity --

19 MR. ALLINDER: No, that's quite all right.

20 THE WITNESS: -- that may have crept into  
21 it.

22 MR. ALLINDER: It's difficult sometimes to  
23 see the levity in the written record.

24 THE WITNESS: Okay.

25 MR. ALLINDER: And so it's better to try to

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 respond directly to the question and not be  
2 facetious.

3 BY MR. GILL:

4 Q. So you have not conducted an informal study?

5 A. I have done an informal survey of a half a dozen  
6 people, but I've been around this business for a long  
7 time.

8 Q. And have you seen anybody else's study on that  
9 subject?

10 A. No.

11 Q. Okay. Now the other opinion that I -- I believe  
12 you've expressed, that had to do with whether or not  
13 the reader of a study would attach any significance  
14 to an acknowledgment of funding if they did read it;  
15 is that correct?

16 A. Well what's the question?

17 Q. Was that your other opinion that you didn't  
18 believe that anybody who happened to notice the  
19 acknowledgment would pay any particular attention to  
20 it?

21 A. Well, anybody -- you know, anybody, nobody,  
22 never, these are very difficult terms to deal with.  
23 In general nobody attributes any importance to that  
24 whatsoever.

25 Q. All right. And is that opinion based upon any

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 study that you've conducted?

2 A. No, it's not.

3 Q. And is it based upon any study that you're aware  
4 of?

5 A. I don't believe there's been a gallup poll of  
6 scientists to quantitate the issue.

7 Q. Or any other study on that subject; true?

8 A. Not to my knowledge.

9 Q. But you think that -- it's your opinion that  
10 most readers of scientific journals are unaware of  
11 review boards for funding agencies prioritizing  
12 funding commitments?

13 MR. PURDY: I'm sorry. Can I just have it  
14 read back.

15 (The record was read by the reporter.)

16 A. I think that most funded investigators assume  
17 that there is some kind of a review board that  
18 evalutes the grants, but the mechanisms by which they  
19 do that may differ with different organizations.

20 Q. So a funded investigator or someone with  
21 experience as a funded investigator who happened to  
22 read a study that acknowledged funding as a --  
23 through CTR special projects might well assume that  
24 that was a reference to some review board process  
25 that had occurred relative to that particular

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 research project?

2 MR. ALLINDER: Object to the form of the  
3 question.

4 A. He might, yes.

5 Q. And in this instance that would be an erroneous  
6 assumption; would it not, because the SAB was not --  
7 would not have been involved at all in the decision  
8 to fund a CTR special project?

9 A. That would not be a correct assumption.

10 Q. And in fact the -- all of the people who made  
11 the decisions to fund a CTR special project would be  
12 employees or agents of the tobacco industry?

13 MR. ALLINDER: Object to the form of the  
14 question.

15 A. That is my understanding.

16 Q. And for all the decisions with respect to  
17 funding a research project to be made by employees or  
18 agents of the tobacco industry, that would be  
19 inconsistent with a promise of full and independent  
20 investigation of the health risks of smoking?

21 MR. PURDY: Object to the form.

22 Q. True?

23 MR. PURDY: Object to the form.

24 A. Untrue.

25 Q. Well you wouldn't expect that the employees and

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 agents of the tobacco companies would be completely  
2 independent with respect to a full and complete  
3 investigation of the health risks of smoking, --

4 MR. PURDY: Object to the form.

5 Q. -- would you?

6 A. You'll have to forgive me, but I don't really  
7 understand the question. So if you would break it  
8 down into parts or simplify it.

9 Q. Assuming that an organization -- let's strike  
10 that.

11 Assume that the tobacco companies published to  
12 the general public a -- an undertaking to sponsor  
13 completely independent research into the health risks  
14 of smoking. All right.

15 A. I --

16 Q. Got that so far?

17 A. Got it.

18 Q. Research that was funded solely and exclusively  
19 by employees and agents of the tobacco companies  
20 would not fall within the parameters of such an  
21 undertaking, would it?

22 A. Untrue.

23 MR. ALLINDER: Object to the form.

24 A. Sorry. Untrue.

25 Q. And on what basis do you believe that's untrue?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. The motives, the goals, the reasons, the  
2 objectives of the sponsor are not related to the  
3 results of a research study. The study speaks for  
4 itself. It has to be submitted to a journal. It has  
5 to be peer-reviewed by experts in the field. The  
6 reviews of the peer-reviewers are then examined by  
7 the editor of the journal who will agree or disagree  
8 with them and make his own decision, after which it  
9 will either be rejected, accepted, or returned to the  
10 investigator for revisions. In any event, the  
11 sponsor plays no role in this process whatsoever.

12 Q. Do you believe there are any investigators  
13 available that might do the tobacco companies'  
14 bidding in the type of situation that I outlined?

15 MR. ALLINDER: Object to the form.

16 A. There -- you know, all things in this, the best  
17 of all possible worlds, are possible. I have not  
18 encountered any evidence that investigators funded by  
19 special projects did not conduct honest, sincere, and  
20 efficient studies, that they engaged in any  
21 scientific misconduct, or that they did not conduct  
22 their studies in the way that grant-funded or  
23 NIH-funded or ACS-funded studies are, they're  
24 published in the same types of journals, they were  
25 subjected to the same kinds of reviews, and as far as

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 I know carried out their work in precisely the same  
2 way as funding from any source. In other words, the  
3 source of funding is irrelevant. It is the conduct  
4 of research and the reporting of the research that is  
5 important. I have yet to encounter any documentation  
6 that either an investigator or the paper that he  
7 published, the reviewers of the paper, or the editor  
8 of the paper -- of the journal engaged in anything  
9 but ethical and appropriate conduct. I am willing to  
10 revise my opinion about any particular investigator  
11 or paper or journal if I am presented with the  
12 evidence.

13 Q. Have you asked to see the results of studies  
14 that were undertaken at the request of lawyers for  
15 the tobacco companies where the funding was supplied  
16 through CTR?

17 MR. ALLINDER: Object to the form of the  
18 question.

19 A. You mean administered by CTR?

20 Q. Administered by CTR.

21 A. Well I assume that many of the papers that I  
22 have reviewed were the results of studies that were  
23 funded by lawyer-initiated special projects.

24 Q. And are you aware that there were some  
25 lawyer-initiated special projects the results of

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 which were never published?

2 A. As I told you before, not all grants result in  
3 papers and not all data are included in papers. I  
4 have no knowledge or I have no access to material  
5 that was generated by studies that were not published  
6 or that were not included in publications.

7 Q. But it's your understanding that some of the  
8 publications that you have been shown fell into this  
9 special project category were lawyer-initiated  
10 studies?

11 A. Let's make a -- a very clear distinction here.  
12 The studies or the topic for the study was initiated  
13 by lawyers; that is, there was an area that the  
14 tobacco companies and their lawyers, executives, else  
15 -- whoever else is in on these decisions, and area  
16 that they felt would be of interest to them and they  
17 therefore requested competent investigators who were  
18 known in the field to investigate this issue. The  
19 investigators were then funded and were encouraged to  
20 publish whatever data resulted from these studies, --

21 Q. Encouraged --

22 A. -- and they did.

23 Q. Encouraged by the lawyers.

24 A. They were encouraged by the terms of the grant  
25 that they were given. And indeed they did. We find

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 most of these papers give credit to CTR special  
2 projects.

3 Q. Are you aware that the Defendants in this case  
4 have asserted claims of privilege on his to the  
5 results of some of the scientific studies that were  
6 initiated by their lawyers?

7 MR. ALLINDER: Object to the form of the  
8 question.

9 A. I'm not acquainted with the precise details of  
10 privilege. I know that I signed a -- a form of  
11 confidentiality with relation to examining documents  
12 in this case. And of course I have maintained that  
13 confidentiality. But I'm not really cognizant of all  
14 of the materials that are included in these  
15 proceedings.

16 Q. Recognizing, Dr. Rubin, that the role of an  
17 attorney is that of an advocate, do you think it's  
18 appropriate for an advocate to be able to release the  
19 results of scientific studies that advance the  
20 interests of his client or her client and to claim  
21 privilege with respect to those that don't?

22 MR. ALLINDER: Objection to the form of the  
23 question.

24 A. You're asking me about --

25 MR. ALLINDER: Assumes -- excuse me.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Assumes facts not in evidence. No foundation.

2 A. You're asking me about legal ethics. Some  
3 people feel that that's an oxymoron, I've heard that  
4 said, but of course I don't agree with that, but I --  
5 I'm not an expert on legal ethics.

6 Q. Well do you have any opinion as -- as a lay  
7 person and as a doctor who certainly has a background  
8 in medical ethics with respect to the appropriateness  
9 of a tobacco company gaining the advantage of certain  
10 research conducted through their lawyers while at the  
11 same time shielding from publication under a claim of  
12 privilege the results of other research that might be  
13 inconsistent with their interests?

14 MR. ALLINDER: Same objections.

15 A. Well you spoke of lawyers conducting research.  
16 I don't -- they may conduct legal research, but they  
17 didn't conduct any research under special projects.

18 Q. All right. Authorized research.

19 A. Funded research.

20 Q. Authorized, funded research. Do you think it's  
21 -- it's --

22 A. Well I -- I don't know the answer to that. You  
23 know, you're dealing with items that are so specific  
24 to circumstances that -- and you're asking me to make  
25 a general statement about matters that are foreign to

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 me.

2 Q. This is another matter beyond your experience --

3 A. I just don't think -- I don't think it would be

4 appropriate for me. If you'd give me specific

5 examples and show me all the circumstances that --

6 the data, the -- what happened, I would be certainly

7 willing to give you my opinion as a layman in legal

8 ethics, but as a -- I don't think you should be

9 asking me global questions that are so specific to

10 the individual situation.

11 Q. So you don't have any opinion on this subject as

12 an expert?

13 MR. ALLINDER: Object to the form of the

14 question.

15 A. I'm not an expert on legal ethics.

16 Q. And you haven't considered this issue of whether

17 it's appropriate or not for lawyers for the tobacco

18 companies to authorize funded research and then

19 selectively approve publication of the results?

20 MR. ALLINDER: Objection.

21 A. Wait a second. I -- that's something brand

22 new. I -- as I understand it, the recipients of

23 funds from CTR special projects were free to publish

24 their results and did so.

25 Q. And might your opinions with regard to this area

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of your investigation change if that assumption is  
2 erroneous?

3 MR. ALLINDER: Object to the form of the  
4 question.

5 A. If I -- any opinions that I have that are based  
6 on erroneous assumptions are subject to change.

7 Q. Now do you understand, Dr. Rubin, that the  
8 Plaintiffs in this case, the State of Minnesota and  
9 Blue Cross Blue Shield of Minnesota, are alleging  
10 that the tobacco industry has misrepresent -- has  
11 misrepresented the health risks of smoking?

12 A. I think something to that effect.

13 Q. And do you understand that the State of  
14 Minnesota and Blue Cross Blue Shield allege that CTR  
15 has conspired with the tobacco companies to  
16 misrepresent the health risks of smoking?

17 A. I'm aware of that.

18 Q. And are you aware that the allegations of  
19 misrepresentation relating to this conspiracy between  
20 the tobacco industry and CTR deal with, first of all,  
21 attempting to reassure the smoking public that the  
22 cigarettes they smoke may not cause cancer and other  
23 diseases when the cigarette companies and the CTR  
24 knew otherwise or believed otherwise?

25 MR. ALLINDER: And the question is are you

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 familiar that that's part of the complaint, right?

2 MR. GILL: Yes.

3 A. Well I've seen that CTR is listed as a  
4 defendant, and I have also read the complaint. In  
5 that complaint are the type of allegations that you  
6 have just included. I would have to see the  
7 complaint again to verify the exact wording, but in  
8 general that's my under -- my understanding is that  
9 CTR is a defendant in such proceedings.

10 Q. Okay. And that another part of the allegation  
11 of misrepresentation is that CTR has conspired with  
12 the tobacco companies to act as a public relations  
13 front in furthering this reassurance to smokers that  
14 none of these Defendants believed?

15 MR. PURDY: I guess let me just object to  
16 the form. I think the complaint speaks for itself.  
17 You may answer.

18 A. As I have said before, I don't remember the  
19 exact wording, but your description I believe is  
20 substantially true.

21 Q. Okay. And do you understand that the State of  
22 Minnesota and Blue Cross Blue Shield are alleging  
23 that the tobacco companies and CTR promised that they  
24 would undertake independent research of the health  
25 risks of smoking and publish the results of that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 research without any editing or censoring?

2 MR. PURDY: Same -- same objection.

3 Q. Do you understand that that's one of the

4 allegations in the case?

5 A. Something to that effect.

6 Q. And do you understand that another allegation

7 with regard to this conspiratorial misrepresentation

8 is that the tobacco companies and CTR have conspired

9 to suppress information that established the link

10 between smoking and disease?

11 MR. PURDY: Counsel, can I just have a

12 continuing objection? Then I won't --

13 MR. GILL: Sure.

14 MR. PURDY: I'm just going to have a

15 continuing objection that each time that he asks a

16 question about his understanding of the allegations

17 that I'm objecting to the form because the complaint

18 speaks for itself.

19 MR. GILL: That's fine.

20 BY MR. GILL:

21 A. Again with -- without vouching for the exact

22 wording, I am familiar with that type of allegation.

23 Q. All right. Now as I understand it, in

24 connection with those allegations, throughout your

25 investigation you have found the conduct of CTR in

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 all respects to have been exemplary?

2 MR. ALLINDER: Object to the form of the  
3 question.

4 Q. Is that true?

5 A. You have a way of using absolute terms. I  
6 believe that the conduct of the CTR has been  
7 exemplary and has contributed substantially to our  
8 understanding of tobacco and health and to underlying  
9 mechanisms of disease. To sit here and state that I  
10 would support each and every action of any  
11 organization, including NIH, for which I hold a great  
12 deal of regard, over a period of more than 40 years,  
13 would not be appropriate.

14 Q. With respect to the specific allegations that we  
15 just visited upon, do you believe that the conduct of  
16 CTR through its employees, its staff, and its agents  
17 has been exemplary in all respects, or have there  
18 been exceptions?

19 MR. ALLINDER: Object to the form.

20 A. Again you throw in words like "in all respects,"  
21 which is an absolute term. I believe that CTR has  
22 done an outstanding job, has encouraged research, has  
23 encouraged investigators, has helped young  
24 investigators at the beginning of their career, has  
25 assisted mature investigators in investigating

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 important issues, and has been a very positive force  
2 in the support of biomedical research. I would just  
3 repeat: When confronted with the record of any  
4 organization whatsoever, be it the American Cancer  
5 Society, American Heart Association, CTR, any other  
6 organization, when confronted with a record of  
7 innumerable decisions over a period of more than 40  
8 years, I think it might be possible to pull out a few  
9 instances of -- out of thousands of decisions that  
10 may have been in retrospect better handled. I think  
11 that that's entirely possible. So when you say  
12 "all," "in all respects," I would agree with that in  
13 general, with the understanding that we're all human  
14 beings, organizations are made of human beings, and  
15 there are occasions when we don't do things in the  
16 best way possible.

17 Q. Do you ever recall testifying under oath that  
18 you were of the opinion that the CTR's actions had  
19 been exemplary in all respects?

20 A. No.

21 Q. If you had ever testified to that proposition  
22 are you of a somewhat different mind now as just  
23 explained in the long answer that you previously  
24 gave?

25 MR. ALLINDER: Object to the form.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I haven't changed my opinions in this case.

2 Q. You've had a chance to look at the -- the Frank  
3 Statement before, have you not?

4 A. I have.

5 (Plaintiffs' Exhibit 3500 marked for  
6 identification.)

7 Q. All right. Showing you Exhibit 3500, Dr. Rubin,  
8 do you recognize this as a copy of the Frank  
9 Statement?

10 A. I do.

11 Q. You've reviewed it many times, I take it?

12 A. I've reviewed it.

13 Q. Do you consider this ad or statement that  
14 appeared in numerous papers throughout the country in  
15 early 1994 to be a --

16 MR. ALLINDER: Excuse me, Dick. You mean  
17 --

18 Q. -- act of public relations?

19 MR. ALLINDER: Do you mean 54?

20 Q. 54, I'm sorry. Let me ask the question over  
21 again so we get a clear record.

22 You know that this Frank Statement appeared in  
23 hundreds of newspapers across the country in early  
24 1954; correct?

25 A. I believe it did.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And among other things it announced the creation  
2 of the TIRC?

3 A. That is correct.

4 Q. Does this Frank Statement have public relations  
5 aspects to it as far as you can tell?

6 MR. PURDY: Object.

7 MR. ALLINDER: Object to the form.

8 A. Well, as I told you, I do not purport to be an  
9 expert in public relations, but insofar as it's a  
10 statement to the public and involves their perception  
11 of the tobacco industry, it would have public  
12 relations impact.

13 Q. And as you read it, and have read it, does it  
14 attempt to portray the tobacco industry in a  
15 favorable light?

16 A. Yes.

17 Q. With respect to the concerns that had been  
18 expressed through certain studies during the previous  
19 year by Dr. Doll and Dr. Wynder and others perhaps?

20 A. That's reasonable.

21 Q. Now the -- the Frank Statement makes certain  
22 commitments to the public; does it not?

23 MR. ALLINDER: Object to the form.

24 A. Makes three.

25 Q. And what are the three?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. You want me to read to you.

2 Q. Yes, please read those that you consider to be  
3 the tobacco industry commitments.

4 MR. ALLINDER: Object to the form.

5 A. We are pledging aid and assistance to the  
6 research effort into all phases of tobacco use and  
7 health. Number 2: We are establishing a joint  
8 industry group known as Tobacco Industry Research  
9 Committee. Number 3: In charge of the research  
10 activities of the committee will be a scientist of  
11 unimpeachable integrity and national reputation. In  
12 addition, there will be an advisory board of  
13 scientists disinterested in the cigarette industry.  
14 A group of distinguished men from medicine, science  
15 and education will be invited to serve on this  
16 board. These scientists will advise the committee on  
17 its research activities.

18 Q. What significance do you attribute to the  
19 statement that the scientist in charge of the  
20 research activities will be of unimpeachable  
21 integrity?

22 A. They say that these scientists of the board will  
23 be of unimpeachable integrity and national reputation.

24 Q. What significance do the attach to the  
25 unimpeachable integrity commitment?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. People of great honesty.

2 Q. Someone unbiased?

3 A. You know, we all have biases about everything.

4 It -- it would be sort of the -- the essence of  
5 honesty is to be able to rise above one's bias and --

6 Q. Someone who will let the chips fall where they  
7 may?

8 A. That's a good way of putting it.

9 Q. So do you see in the reference to unimpeachable  
10 integrity a commitment that the director of the  
11 Scientific Advisory Board will be someone who will  
12 let the chips fall where they may with respect to the  
13 results of the research that is undertaken?

14 MR. ALLINDER: Object to the form.

15 A. I would think so.

16 Q. And what significance do you place on the  
17 reference to the fact that the members of the  
18 Scientific Advisory Board will be disinterested in  
19 the cigarette industry?

20 A. Disinterested does not mean uninterested.

21 Impartial.

22 Q. Again, scientists who are willing to let the  
23 chips fall where they may regardless of the results  
24 of the research?

25 A. I think that that is a fair statement.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Scientists who would let the chips fall where  
2 they may with respect to prioritizing funding  
3 requests regardless of the interests of the sponsors  
4 of the research?

5 A. I would agree with that.

6 Q. And those are commitments that anyone reading  
7 this document would likely arrive at?

8 MR. PURDY: Object.

9 MR. ALLINDER: Object to the form.

10 Q. True?

11 MR. ALLINDER: Same objection.

12 A. I wouldn't disagree with you.

13 Q. You read then the reference to a scientific  
14 director of unimpeachable integrity and SAB members  
15 disinterested in the cigarette industry to be a  
16 commitment that the conduct of the research program  
17 of this TIRC will be fair and objective?

18 MR. ALLINDER: Object to the form.

19 A. I would agree with that.

20 Q. Will permit the researchers to fully disclose  
21 their findings?

22 MR. ALLINDER: Object to the form.

23 A. I would agree with that.

24 Q. And in all respects let the chips fall where  
25 they may if in fact the research tends to point

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 toward causation between cigarette smoking and  
2 disease?

3 A. I think that's accurate.

4 Q. Now the Frank Statement does contain some  
5 additional commitments by the cigarette industry;  
6 does it not?

7 MR. ALLINDER: Object to the form.

8 A. Mostly in the form of joint financial aid.

9 Q. Well in the first column, down near the bottom  
10 of the first column, Exhibit 3500, there's a  
11 commitment by the industry that it accepts an  
12 interest in people's health as a basic responsibility  
13 paramount to every other consideration in our  
14 business; true?

15 MR. ALLINDER: Object --

16 A. That's what it says.

17 MR. ALLINDER: Excuse me. Object to the  
18 form.

19 A. Sorry. That's --

20 Q. Now that's a commitment; is it not?

21 MR. ALLINDER: Object to the form.

22 A. No, sir.

23 Q. That's not a commitment? That's not a  
24 commitment --

25 A. An acceptance is not a commitment. A commitment

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 is a promise to do something.

2 Q. Well do you read that statement as promising  
3 that the cigarette --

4 A. Well --

5 Q. -- industry will put people's health paramount  
6 to every other consideration of its business?

7 MR. ALLINDER: Object to the form.

8 A. That's a point of view. As I read it, that is  
9 their point of view of what their basic  
10 responsibility is. Commitment. I must say there's  
11 another meaning of commitment. One could say there  
12 is a commitment to a cause, commitment to missionary  
13 Christianity or commitment to communism, what have  
14 you. That's a different use of the word, but a  
15 commitment to do something implies a promise to do  
16 something.

17 Q. Well a commitment can be to a concept; can it  
18 not?

19 A. Yes.

20 Q. And there can also be acceptance of a concept?

21 A. More or less the same.

22 Q. Yes. And the concept that the cigarette  
23 industry --

24 A. Well, not -- no, no, I'm sorry. I regret saying  
25 that.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 Q. Do you wish to change that answer?

2 A. Yes. I can accept the concept of cannibalism  
3 but I wouldn't have any commitment to it.

4 Q. Well if you accepted the cannibalism, one might  
5 readily understand that you intended to follow that  
6 concept?

7 A. No, I accept the concept that it exists, but I  
8 don't have any commitments to it.

9 Q. So would you -- in connection with the  
10 statement, "We accept an interest in people's health  
11 as a basic responsibility, paramount to every other  
12 consideration in our business," you read that as a  
13 reference to a concept but not a commitment to the  
14 concept?

15 MR. ALLINDER: Object to the form.

16 A. Well, I -- I don't know. It's not that  
17 specific. What they are saying actually speaks for  
18 itself. To me this means that the sponsors who are  
19 listed below accept that an interest in people's  
20 health supersedes many other considerations.

21 Q. Supersedes all other considerations of their  
22 business; correct?

23 MR. ALLINDER: Object to the form.

24 A. You could read it that way.

25 Q. Isn't that a fair way to read it?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. ALLINDER: Object to the form.

2 A. Well I think it's -- it's fair. You're getting  
3 into semantics here. Paramount can mean the most  
4 important. I think paramount --

5 Q. Paramount means superior to; correct?

6 MR. ALLINDER: Object to the form.

7 A. I think so. I think there is a subsidiary  
8 definition somewhere that it could be among, among  
9 the most important.

10 Q. Well the sponsors of the TIRC are saying that  
11 they accept the concept that the health of their  
12 customers is paramount and superior to all other  
13 considerations of their business. Now that's a fair  
14 reading, isn't it?

15 MR. PURDY: Objection.

16 MR. ALLINDER: Object to the form.

17 A. I think it's fair.

18 Q. And one of the considerations certainly of the  
19 tobacco business and the cigarette industry would be  
20 to make money; true?

21 A. It's what corporations are for.

22 Q. And making money, that's of paramount interest  
23 to the stockholders of the companies; is it not?

24 MR. ALLINDER: Object to the form.

25 A. I don't know. If you took a poll of

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 stockholders and said to them, What is more  
2 important, health or your dividends?, they might say  
3 health. I don't really know. I think you need a --  
4 a sort of a gallup or roper poll of shareholders. I  
5 mean they're not hard --

6 Q. Are you talking about their health or --

7 A. They're not a --

8 Q. -- or somebody else's health?

9 A. Shareholders are not a heartless bunch. They're  
10 you and me, and you know, everybody else these days.  
11 And I think we all -- all of us want to do good. So  
12 I -- I wouldn't be surprised if a large majority of  
13 shareholders would opt for health over profits.

14 Q. So you don't find it surprising that management  
15 of the cigarette companies would accept the concept  
16 that they should put the health of their customers  
17 above the profits that might be supplied to their  
18 shareholders?

19 MR. ALLINDER: Object to the form.

20 A. I don't consider tobacco executives or other  
21 executives as evil people. I think they are  
22 motivated by the same kind of concerns that everyone  
23 else has. And clearly the health of -- and  
24 well-being of our people in our society is a very  
25 large consideration in -- in any activity.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And certainly I take it you would agree that the  
2 health of the millions of people who smoke cigarettes  
3 in 1954 was far more important and ought to have been  
4 far more important than the profits to be gained or  
5 earned by those tobacco companies; true?

6 A. Well I think in general it's true. I mean this  
7 is something right out of George Bernard Shaw. You  
8 probably are familiar with the phrase that deal with  
9 this issue. But in general I -- I think that the  
10 health of people is more important in general than  
11 the profit of a corporation.

12 Q. Well Dr. Rubin, as -- as a physician you don't  
13 have any doubt whatsoever that the health of millions  
14 of smokers is far more important than the profits of  
15 the individual tobacco companies; true?

16 MR. ALLINDER: Object to the form of the  
17 question.

18 A. I don't have any arguments with that.

19 Q. And you're -- you're indicating that the  
20 management of the tobacco companies shouldn't have  
21 had any argument with that concept either?

22 A. I don't think they did. This Frank Statement  
23 speaks for itself.

24 Q. And I was just going to get to that. Based upon  
25 what they put into this Frank Statement on that

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 subject, the management of the tobacco companies was  
2 announcing to the public that they had no problem  
3 with putting the health of smokers above their own  
4 profits?

5 MR. ALLINDER: Object to the form.

6 A. I would read it that way.

7 Q. And I take it you would be very critical of the  
8 management of tobacco companies if they didn't follow  
9 through on that commitment?

10 MR. ALLINDER: Object to the form.

11 A. I believe that people should follow through on  
12 their commitments.

13 Q. And this is certainly a very important  
14 commitment with respect to the health of millions of  
15 Americans who were smoking cigarettes back in 1954;  
16 true?

17 MR. ALLINDER: Object to the form.

18 A. This is an important commitment.

19 Q. All right. Now another statement, or perhaps  
20 it's a commitment, that the sponsors of TIRC made in  
21 the Frank Statement was that they didn't believe  
22 their products were injurious to health. Do you see  
23 that?

24 A. That's --

25 MR. PURDY: Objection.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. -- what it says.

2 MR. PURDY: Object -- excuse me. Just  
3 object to the form. Go ahead.

4 Q. And then they also made a commitment that the  
5 tobacco companies would always cooperate closely with  
6 those whose task it was to safeguard the public  
7 health; correct?

8 MR. ALLINDER: Object.

9 Q. They indicated that they had cooperated in the  
10 past and that they would always continue to cooperate  
11 closely with those whose task it was to safeguard the  
12 public health?

13 MR. ALLINDER: Object to the form.

14 A. That's what it says.

15 Q. And you would regard that as a commitment, would  
16 you not?

17 MR. ALLINDER: Object to the form.

18 A. It is a commitment.

19 Q. And that would be a solemn commitment given the  
20 gravity of the potential harm that might occur if in  
21 fact the products of cigarette manufacturers were  
22 injurious to health?

23 MR. ALLINDER: Object to the form.

24 A. I don't know the question exactly, but in  
25 general I'll agree with you.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now on the -- in the second column of the Frank  
2 Statement, the manufacturers indicate that they are  
3 concerned that their products should even been  
4 suspected as a cause of serious disease, that that  
5 would be a matter of deep concern to them. Do you  
6 see that?

7 A. That's what it says.

8 Q. Okay. And then they go on to say that in order  
9 to meet that concern they're going to establish this  
10 TIRC.

11 A. Right.

12 MR. ALLINDER: Object to the form.

13 Q. And the TIRC is going to provide aid and  
14 assistance to the research efforts into all phases of  
15 tobacco use and health. That's what it says under  
16 number 1; correct?

17 MR. ALLINDER: Object to the --

18 Q. All phases?

19 MR. ALLINDER: Object to the form.

20 A. That's what it says.

21 Q. And then under number 2 it says that for that  
22 purpose; in other words, to provide aid and  
23 assistance to the research efforts into all phases of  
24 tobacco use and health, it's going to establish this  
25 joint industry group; correct?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Correct.

2 Q. So the work of this joint industry group will be  
3 to conduct research or to see that research is  
4 conducted into all phases of the issue of tobacco use  
5 and health?

6 MR. ALLINDER: Object to the form.

7 A. It doesn't say so, but it says they will support  
8 research efforts.

9 Q. Pledging aid and assistance?

10 A. Yes.

11 Q. You interpret that as support?

12 A. Funding.

13 Q. Okay. And as we previously discussed, the  
14 commitment that was made is that the funding would  
15 been handled through this TIRC that would be composed  
16 of this scientific director of unimpeachable  
17 credibility?

18 A. Integrity.

19 Q. Okay. And who would preside over a Scientific  
20 Advisory Board that would be disinterested in the  
21 cigarette industry?

22 MR. ALLINDER: Object to the form.

23 A. That's what it says.

24 Q. So that the public in reviewing this Frank  
25 Statement, especially the smoking members of the

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 public, could be reassured that the manufacturers of  
2 these products are going to look into this alleged  
3 relationship between smoking and health?

4 MR. ALLINDER: Object to the form.

5 A. They are not going to look into it. They, the  
6 sponsors, will support or fund research by members of  
7 the biomedical community to look into the matter.

8 Q. So the smoking members of the public who may  
9 have been upset to read these reports linking smoking  
10 to disease would be reassured based upon the Frank  
11 Statement that the cigarette industry will provide  
12 funds to conduct research into this supposed  
13 relationship?

14 MR. ALLINDER: Object to the form.

15 A. That's correct.

16 Q. But the industry, the tobacco industry in this  
17 same document is reassuring smokers that it doesn't  
18 believe that its cigarette products are injurious to  
19 health?

20 MR. ALLINDER: If that's a question, object  
21 to the form.

22 Q. Correct?

23 A. There's a statement here that says "We believe  
24 the products we make are not injurious to health."  
25 It speaks for itself.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And that would be reassuring, I take it, to  
2 anybody who was a smoker at the time?

3 MR. ALLINDER: Object to the form.

4 A. Well I can't tell you that. That's the belief  
5 of the cigarette manufacturers.

6 Q. The makers of the very product that was accused  
7 of being injurious to health?

8 MR. ALLINDER: Object to the form.

9 A. That's correct.

10 Q. And certainly someone who makes a product ought  
11 to know a great deal about the product that it makes;  
12 true?

13 MR. ALLINDER: Object to the form.

14 A. In general that's true.

15 Q. And if anybody should know whether a product is  
16 injurious to health it ought to be the manufacturer  
17 of the product; true?

18 MR. ALLINDER: Object to the form.

19 A. It would be nice if that really were true, but  
20 unfortunately the effects of -- of many products are  
21 not immediately apparent and it is often the case  
22 that the dangers associated with the use of that  
23 product only become evident years later and are  
24 discovered by others, so it's very common for the  
25 manufacturer, as the deceived husband, to be the last

1 to know.

2 Q. But I take it you would agree with me, Dr.

3 Rubin, that if anybody should know whether a given  
4 product is injurious to health, it ought to be the  
5 entity that manufactured the product?

6 MR. PURDY: Object to the form.

7 MR. ALLINDER: Object to the form.

8 MR. PURDY: Argumentative.

9 A. You mean should be informed about this or should  
10 be? --

11 Q. Should know.

12 A. How -- it doesn't follow. It's often that the  
13 manufacturer produces a product that he considers to  
14 be safe, that appears to be safe, that's legal, or  
15 that has a customary use, and that later turns out to  
16 be hazardous or hazardous in certain circumstances.  
17 It is not always the manufacturer who discovers  
18 this. In fact I would say since manufacturers are  
19 not scientists and have limited staffs of their own  
20 that usually it's more the public health types, the  
21 epidemiologists or the toxicologists, who discover  
22 the hazard based upon the occurrence of disease when  
23 people have been exposed to the product.

24 Q. Well the cigarette companies employed scientists  
25 back in 1954, didn't they?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. ALLINDER: Object to the form.

2 A. Yes, but they did not employ academic  
3 epidemiologists who would conduct large-scale  
4 epidemiologic studies of thousands of people. That's  
5 not feasible in a manufacturing setting.

6 Q. But it's feasible to have a research and  
7 development department; is it not?

8 A. Ordinarily R&D deals with the product itself,  
9 how to make it better or more appealing or more  
10 effective. The diseases, environmental diseases I  
11 think which -- a study of which I have some  
12 credibility -- are ordinarily discovered only after  
13 large-scale studies by academic scientists. I think  
14 it would be an unusual situation where the hazards  
15 were -- of an apparently safe product were discovered  
16 by the research staff of the company. Now, there is  
17 one exception to this, and that's the pharmaceutical  
18 industry, which is required by law to test their  
19 products in different types of animals, so --

20 Q. But many other manufacturers test their products  
21 before they're distributed to the public and test  
22 them for safety; true?

23 MR. ALLINDER: Object to the form.

24 A. If you tested tobacco in the routine tests that  
25 the FDA uses, you'd probably come up with something

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 pretty safe.

2 MR. ALLINDER: Can we pause for just a  
3 minute. Where are we on time?

4 (Brief recess at 4:13 p.m.)

5 BY MR. GILL:

6 Q. The manufacturers of automobiles, they do  
7 testing to try to determine if their products are  
8 safe; correct?

9 MR. ALLINDER: Object to the form.

10 A. They do it this time. I don't believe they  
11 always did that.

12 Q. Do you think they were doing any by 1954?

13 MR. ALLINDER: Object to the form.

14 A. Well I can't answer that.

15 Q. Would you expect that even in 1954 manufacturers  
16 of -- of food products that were going to be ingested  
17 did some type of research to be sure that there was  
18 nothing they were putting into the food that might  
19 cause an injurious health result?

20 MR. PURDY: Object to the form.

21 A. Let's now go back to the car manufacturers just  
22 for a moment with your permission. One of the major  
23 problems that occurs with automobiles I think  
24 acknowledged by most people is air pollution. Some  
25 years ago the air pollution of Los Angeles, let's

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 say, which is perhaps the most severe in the country,  
2 was attributed for the most part to manufacturing  
3 emissions. It was only after considerable research  
4 that it was discovered that manufacturing emissions  
5 played only a small role in the air pollution of Los  
6 Angeles and that the large part of the particulates  
7 and gaseous air pollution was caused by emissions  
8 from automobiles. This finding, which is not  
9 trivial, one of the major problems with automobiles  
10 today, was not discovered by the automobile companies  
11 at all, it was done by independent, for the most part  
12 academic, scientists. Research into the effects of  
13 air pollution has not been done by the automobile  
14 companies, it's been done principally by  
15 environmental scientists.

16 Q. Dr. Rubin, is it your understanding though, that  
17 manufacturers of products do have some responsibility  
18 to attempt to determine whether their products are  
19 safe before they place them on the market?

20 A. This is my understanding.

21 MR. ALLINDER: Excuse me.

22 THE WITNESS: Excuse me.

23 MR. ALLINDER: Object to the form. Go  
24 ahead.

25 A. It is my understanding, and indeed after testing

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 products are certified by say the FDA or other  
2 consumer safety agencies of the government. In that  
3 respect tobacco though unregulated has clearly been  
4 declared a legal product and is taxed, things like  
5 that. The -- this is not to say that it's safe, and  
6 you are familiar with my writings on that subject.  
7 But the -- the dangers associated with tobacco, as  
8 with many environmental agents, have principally been  
9 elucidated by people outside the industry. It's a  
10 common pattern. There's nothing unusual about it.  
11 Q. Now I take it you'd agree, Dr. Rubin, that even  
12 with a legal product it is not appropriate to sell a  
13 legal product through illegal means?

14 A. You mean smuggling?

15 MR. ALLINDER: Excuse me. Object to the  
16 form.

17 Q. Through any illegal means.

18 MR. ALLINDER: Same objection.

19 Q. For instance,, to misrepresent the qualities of  
20 a legal product?

21 MR. ALLINDER: Object to the form.

22 A. I do not advocate misrepresentation.

23 Q. And certainly simply because a product is legal  
24 to be sold would not excuse selling it through some  
25 type of illegal conduct?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I would not support illegal conduct.

2 Q. Now let's go back to the -- to the statement in  
3 the -- in Exhibit 3500 that we believe that the  
4 products we make are not injurious to health. Are  
5 you telling me that you wouldn't expect that as of  
6 1954 that the tobacco industry would have any basis  
7 to know one way or the other whether its products  
8 were injurious to health?

9 MR. ALLINDER: Object to the form.

10 A. I do not hold myself out as an expert in the  
11 state of the art of what was precisely known in  
12 1954. Whatever I know about it is based upon  
13 recollections of what I knew as a medical student,  
14 but an informed citizen.

15 Q. So you --

16 A. So--

17 Q. As you sit here today you don't really know what  
18 the cigarette industries knew about the safety of  
19 their products back in 1954?

20 A. Well --

21 MR. ALLINDER: Excuse me. You need to wait  
22 until he's done.

23 THE WITNESS: I haven't said a word.

24 MR. ALLINDER: You were winding up. Object  
25 -- object to the form. I sensed it.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 THE WITNESS: Extrasensory perception.

2 Q. Is that a fair statement, Dr. Rubin?

3 MR. ALLINDER: Same objection.

4 A. Well it's a fair statement in the sense that I  
5 have not made a systematic study.

6 Q. All right.

7 A. Which --

8 Q. And would it --

9 A. -- which is --

10 Q. Pardon me.

11 A. -- possible to make, and perhaps others have  
12 made such studies. I have not participated in a  
13 precise study, but I do know that the epidemiologic  
14 data and the skin painting experiments at that time  
15 elicited considerable controversy and that the issues  
16 relating to smoking and health were by no means  
17 closed issues at that time.

18 Q. Now when the smoking industry stated in the  
19 Frank Statement that it believed its products were  
20 not injurious to health, do you think it's reasonable  
21 that -- that smokers reading that statement would  
22 believe that the cigarette manufacturers had some  
23 basis upon which to make that statement?

24 MR. ALLINDER: Object to the form of the  
25 question.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That would be a reasonable inference.

2 Q. All right. And certainly the -- the statement  
3 by the manufacturers that they didn't believe  
4 cigarettes were injurious to health would be a lot  
5 more reassuring to smokers than a similar statement  
6 from the automobile industry?

7 MR. ALLINDER: Object to the form of the  
8 question.

9 A. You mean a similar statement about automobiles,  
10 about the automobile?

11 Q. No, about cigarettes. If the automobile  
12 industry had said, We don't believe that smoking is  
13 injurious to health, that wouldn't be very reassuring  
14 to smokers, would it, because what does the  
15 automobile industry, what would they presumably know  
16 anything about smoking?

17 A. Well why would they?

18 MR. ALLINDER: Excuse me. Object to the  
19 form.

20 Q. But if the cigarette industry made a statement  
21 that it did not believe that the products it makes  
22 were injurious to health, such a statement could well  
23 be reassuring to smokers concerned about these  
24 studies linking smoking to cancer?

25 MR. ALLINDER: Object to the form.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. True?

2 MR. ALLINDER: Same objection.

3 A. Well I can't speak for the general public. I

4 maybe have a built-in skepticism for self-serving

5 statements by people or organizations, and --

6 Q. Is that what you think these -- these statements

7 are on the Frank Statement, simply self-serving

8 statements with no more than public relations value

9 to them?

10 A. No, I --

11 MR. ALLINDER: Objection.

12 A. -- I didn't say that at all.

13 MR. ALLINDER: Object to the form.

14 Q. There's nothing in this statement that purports

15 to suggest that the cigarette industry is anything

16 other than sincere with respect to these commitments;

17 true?

18 MR. ALLINDER: Object to the form.

19 A. True. A self-serving statement can be sincere

20 and can be accurate. It may serve better the

21 interests of the person or organization who says it,

22 but by itself the term "self-serving" to me is

23 neutral. It may be accurate and it may be sincere.

24 It means only that it advances the interests of the

25 individual or organization, but --

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And of course you weren't a smoker back in 1954  
2 because you haven't smoked cigarettes during your  
3 life?

4 MR. ALLINDER: Object to the form.

5 A. I did. I smoked two cigarettes. I smoked one,  
6 didn't like it. The second one convinced me I would  
7 never like it.

8 Q. So assuming you had the two cigarettes prior to  
9 1954, I take it that you weren't specifically  
10 concerned about this health risk as it pertained to  
11 you?

12 A. No.

13 Q. Obviously your views might have been different  
14 if you smoked one or two packs of cigarettes a day in  
15 1954 and had been doing so for several years?

16 MR. ALLINDER: Object to the form.

17 Q. True?

18 A. I would be more concerned about my health, but  
19 not from the Frank Statement, but from the evidence  
20 that had been accumulating would give me pause, yes.

21 Q. And it would be natural to want to rationalize  
22 your use of some product that was linked to a deadly  
23 disease like lung cancer; true?

24 MR. ALLINDER: Object to the form.

25 Q. Especially if you wanted to keep smoking and

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 enjoyed smoking?

2 MR. ALLINDER: Object to the form.

3 A. I would say if you wanted to keep smoking you  
4 might look for good reasons to continue to smoke.

5 Q. And in fact if you not only liked smoking but  
6 were addicted to smoking, you would be in even  
7 greater search of reasons to continue the habit --

8 MR. ALLINDER: Object to the --

9 Q. -- or the addiction; true?

10 MR. ALLINDER: Object to the form.

11 A. I'm not an expert on addiction. I know  
12 something about the topic. But the facile  
13 distinction between liking cigarettes and being  
14 addicted to them is a subject of discussion all of  
15 its own, so I think we ought to either have a long  
16 discussion about addiction or leave out a  
17 politically-charged term.

18 Q. Well I don't think we need to have a long  
19 discussion about it, but you're certainly familiar  
20 with people who are addicted to alcohol, you've --  
21 you've studied that subject; have you not?

22 A. I have indeed.

23 Q. And someone -- and certainly there are health  
24 risks that are involved with excessive use of alcohol  
25 as you have pointed out in a number of your

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 publications?

2 A. There are serious health risks, yes.

3 Q. And somebody who is addicted to alcohol in the  
4 sense that they are an alcoholic would certainly look  
5 for all kinds of rationalizations as to why they  
6 might not succumb to any of the alcohol-related  
7 diseases that are out there?

8 MR. ALLINDER: Object to the form.

9 Q. True?

10 A. True in part. Some alcoholics look for reasons  
11 and say it's not going to hurt them. Probably more  
12 feel that it's going to kill them but they prefer to  
13 drink the alcohol and die young, you know. That's  
14 the fact of life and it's unfortunate.

15 Q. Certainly with respect to addicted users of --  
16 of products that want to believe that the danger  
17 inherent to the products use won't befall them, they  
18 would be looking for reasons to support that view?

19 MR. ALLINDER: Object to the form.

20 Q. True?

21 A. Well they might. You know, probably most  
22 smokers that I have been acquainted with are fully  
23 aware of the risks that they run by smoking, and get  
24 enough pleasure from cigarettes for whatever reason  
25 that they are willing to run those risks.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And again, this isn't a study you've conducted,  
2 this is just --

3 A. This is my.

4 Q. -- Conversations you've had with acquaintances  
5 on that subject?

6 A. This is my impression. I mean quite apart from  
7 scientific studies I also have impressions of human  
8 behavior, and that is one of my impressions. I -- I  
9 would go back to my childhood. I believe that when I  
10 was a child in the 30s that people recognized  
11 cigarettes weren't good for you. We called them  
12 coffin nails.

13 Q. And do you know smokers who don't believe that  
14 they will succumb to any of the diseases that are  
15 linked to smoking?

16 A. Well I know a couple, two, physician smokers who  
17 understand the risks they run and are willing to risk  
18 the bullet in the hope that they will dodge the  
19 bullet.

20 Q. And --

21 A. But they know the bullet's out there.

22 Q. And these are physicians that I take it have  
23 accepted the causal link between smoking and cancer  
24 and cardiovascular disease?

25 A. Oh, yes. They're -- they're --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now many lay people, smokers, back in 1954 may  
2 very well not have been prepared to accept the causal  
3 link between their smoking habit and those deadly  
4 diseases; true?

5 MR. ALLINDER: Object to the form.

6 A. Well that's speculation on my part. I have no  
7 factual knowledge. But the -- I think -- I think  
8 what you had was a mixed population. I -- I believe  
9 from what I recall of those times that virtually  
10 everyone was aware that cigarette smoking had been  
11 alleged to be incriminated as a cause of lung cancer  
12 and perhaps some other diseases. It is my guess that  
13 some of them quit smoking, some of them continued  
14 smoking in the hope that they could continue their  
15 habit but not been one of the victims. Some people  
16 probably were ignorant of the entire matter. There  
17 were many -- you know, many other people who look  
18 upon it as a -- as a risk-benefit type of situation,  
19 feel that they're getting enough benefit out of  
20 smoking that they're willing to take the risks. Most  
21 people know there are very real risks.

22 Q. But I take it that it's reasonable to assume  
23 that most smokers who have read the Frank Statement  
24 back in 1954 were glad to find out that the cigarette  
25 industry was going to put their health interests

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 above the profit interests of the industry?

2 MR. PURDY: Objection.

3 MR. ALLINDER: Object to the form.

4 Q. True.

5 MR. PURDY: That calls for speculation.

6 A. Well I think it's a nice thing, yeah, I --

7 Q. They'd been reassured to know that?

8 MR. ALLINDER: Object to the form.

9 A. Again you use loaded terms. I'm not sure how  
10 reassured people are by public statements or  
11 advertisements, but I think people would look upon  
12 this and say they're doing the right thing.

13 Q. And smokers would be reassured to know that the  
14 manufacturers of these products, they didn't believe  
15 that the products were injurious to the health of  
16 their customers?

17 MR. ALLINDER: Object to the form.

18 Q. True?

19 A. I -- I -- that -- that I really don't know. You  
20 know, there are some people who are born skeptics who  
21 are not, there are other people who will accept  
22 whatever they read as long as it's printed, and there  
23 are many people in between.

24 Q. And many people who rationalize bad habits?

25 A. I'm sure they -- there are.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And smokers would also be reassured to know that  
2 the tobacco industry was going to cooperate closely  
3 with those who were expected to safeguard the public  
4 health as it would relate to smoking and disease?

5 MR. ALLINDER: Object to the form.

6 Q. True?

7 A. As I say, "reassured" is a word that I am not  
8 sure is appropriate here, but they would be pleased  
9 to know that there would be such cooperation.

10 Q. And through the creation of the TIRC and the  
11 SAB, those smokers would be reassured to know that if  
12 the research sponsored by the cigarette industry  
13 developed information establishing the causal  
14 connection between smoking and disease that the  
15 industry would fully disclose that information to  
16 them. That would be reassuring also; true?

17 MR. ALLINDER: Object to the form.

18 A. I think you've got the role of the TIRC a little  
19 wrong. There was never a time when the funding by  
20 TIRC was a major part of worldwide funding in the  
21 tobacco research. It began as a small part of that  
22 and always remained quite a small part of total  
23 funding for research that was relevant to tobacco  
24 use. So when you say that the cigarette companies  
25 would alert the public to any findings from the TIRC,

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 there is an implicit assumption that somehow those  
2 findings would be more important or more worthy of  
3 dissemination than all of the research relating to  
4 tobacco and health funded by other organizations such  
5 as the National Cancer Institute as a prime example,  
6 and that is incorrect. TIRC and its later  
7 organization, CTR, did produce interesting and  
8 important data, but by -- but were by no means the  
9 only source of such information, and if the tobacco  
10 companies or any other organization were to  
11 disseminate information, they certainly would not  
12 restrict it to projects funded by the CTR.

13 Q. But certainly if research funded by the tobacco  
14 industry itself demonstrated a causal link between  
15 smoking and cancer and that research was disclosed  
16 through the good auspices of the tobacco industry,  
17 that would be a very credible piece of information to  
18 smokers; true, in terms of their ability to continue  
19 to rationalize a dangerous habit?

20 A. Well I --

21 MR. ALLINDER: Object -- excuse me. Object  
22 to the form.

23 A. As I've told you, the funding, the source of  
24 funding for scientific research is irrelevant. It's  
25 the results of scientific research. So whether this

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 link were established by a project funded by CTR or a  
2 project funded by NIH or American Cancer Society is  
3 irrelevant. It's the information that gets out into  
4 the public domain that's important and the  
5 credibility of the work itself, the credibility of  
6 the journal, the credibility of the investigator.  
7 Those are the things that count. It's not the source  
8 of funding.

9 Q. The average member of the public wouldn't be  
10 aware of all those nuances; true?

11 MR. ALLINDER: Object to the form.

12 A. I think that the average member of the public  
13 would read in the paper that A is linked to B and  
14 results in C. He might then read somewhere if he  
15 gets to the end of the article who sponsored the  
16 research, but what he would read and what the  
17 headline would say is the substance of the research,  
18 and that's the way it goes. I would challenge you to  
19 disclose to me the funding for the relationship  
20 between high cholesterol and heart disease. I  
21 believe you're probably aware that there is such a  
22 relationship. And I doubt very much, unless you  
23 surprise me, that you can tell me which precise  
24 papers have really put it on the map and who funded  
25 those studies.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Assuming the average member of the public  
2 couldn't do that, do you think the average member of  
3 the public who was concerned about cholesterol would  
4 be influenced by an article in a newspaper announcing  
5 that a research project funded by the egg industry  
6 had demonstrated --

7 (Reporter interruption.)

8 Q. -- the egg industry --

9 A. The Egg Board is actually the title.

10 Q. -- had demonstrated a cause and effect  
11 relationship between ingestion of eggs, high  
12 cholesterol and heart disease?

13 A. Probably have --

14 MR. ALLINDER: Excuse me, I'm not sure that  
15 I heard a question, but I object to the form.

16 A. The average person, including everyone in this  
17 room, would read the headline, would read the story,  
18 and might or might not remember that at the end of  
19 the story there is a little line that said, "This  
20 study was sponsored by the Egg Board."

21 Q. If it was sponsored by the Egg Board, it's not  
22 likely that that would be a little tag line at the  
23 end of the article; true?

24 MR. ALLINDER: Object to the form.

25 A. In my experience the source of funding goes at

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the end because it's not terribly relevant. And  
2 indeed, I challenge you to tell me the source of  
3 funding of the major papers that have established the  
4 link between cholesterol and heart disease.

5 Q. Well unfortunately you don't get to ask any  
6 questions today.

7 A. Okay.

8 MR. PURDY: But I think if you can't answer  
9 that you ought -- you ought to stop.

10 MR. GILL: I am just about done.

11 Q. Dr. Rubin, are you telling me as we complete  
12 this area of your examination that you don't believe  
13 that it would be of particular relevance to smokers  
14 to find out that research sponsored by the cigarette  
15 industry had produced results that established a  
16 causal link between smoking cigarettes and cancer and  
17 other diseases?

18 A. I don't --

19 MR. ALLINDER: Object to the form.

20 A. I don't think the average smoker or nonsmoker  
21 would give a damn who sponsored the research. I  
22 think he would care very much what the results of the  
23 research were.

24 Q. And the --

25 A. But I --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Do you think somebody attempting to rationalize  
2 their continued use of cigarettes would react any  
3 differently to a study that purported to establish  
4 the link between smoking and disease if on the one  
5 hand the study had been sponsored by the cigarette  
6 industry or on the other hand the cigarette industry  
7 publicly announced that it disputed the results of  
8 the study?

9 MR. ALLINDER: Object to the form.

10 A. I think it's all irrelevant. I think people  
11 look at what the newspapers say the facts are. The  
12 facts will speak for themselves and they may be  
13 influenced by what leaders in the field say, by what  
14 the Surgeon General of the United States said, by  
15 what the Direct Chief of Medicine at the Mayo Clinic  
16 says or people of that caliber. These are the things  
17 that influence public opinion, not the source of  
18 funding of research projects.

19 Q. And certainly one of the leaders in the tobacco  
20 field would be the manufacturers of cigarettes?

21 A. They would not be leaders in medical research,  
22 they are leaders in the manufacture of cigarettes and  
23 other tobacco products, but not leaders of medical  
24 research.

25 Q. And --

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That does not mean to say that funding of  
2 scientists by the CTR has not been beneficial, it has  
3 been, it's resulted in important and significant  
4 papers, but in terms of the general public I think  
5 that the source of funding is not an important issue.

6 Q. But as an investigator here attempting to let  
7 the chips fall where they may, you don't perceive  
8 that an admission by the cigarette industry that  
9 cigarettes cause lung cancer and other diseases would  
10 have any material effect on the continued use of  
11 cigarettes by their customers?

12 MR. ALLINDER: Object to the form.

13 A. I don't think it would make any difference at  
14 all, given -- given the publicity attached to  
15 findings of the Surgeon General and given the  
16 publicity to many other epidemiologic and  
17 experimental studies.

18 Q. All of which the cigarette industry has  
19 attempted to dispute?

20 MR. ALLINDER: Objection.

21 MR. PURDY: Objection to form.

22 MR. ALLINDER: That's a good place to stop,  
23 Dick. Don't you think?

24 MR. GILL: Yes, it is. Can we have an  
25 answer to that?

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953



1 MR. ALLINDER: Do you want to hear the  
2 question again?

3 THE WITNESS: Well what is the question?  
4 (The record was read by the reporter.)

5 MR. GILL: There's at the question mark at  
6 the end of that statement.

7 THE WITNESS: Oh.

8 Q. All of those studies that you just referred to  
9 by the Surgeon General and the others, the cigarette  
10 industry has attempted to dispute the results of  
11 those studies; true?

12 MR. PURDY: Object to the form. That --  
13 that misstates the -- that's a misstatement of the  
14 record.

15 MR. ALLINDER: And I have an objection to  
16 it.

17 A. I'm not entirely familiar with all the  
18 statements of the cigarette industry.

19 Q. In response to those studies?

20 A. That's correct.

21 MR. GILL: Okay.

22 MR. ALLINDER: Done. 8:30 tomorrow.

23 (The deposition was in recess at 4:44 p.m.)

24

25

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

## 1 C E R T I F I C A T E

2 I, Judy A. Steinke, hereby certify that I  
3 am qualified as a verbatim shorthand reporter; that I  
4 took in stenographic shorthand the testimony of  
5 EMANUEL RUBIN, M.D. at the time and place aforesaid;  
6 and that the foregoing transcript, Volume I,  
7 consisting of pages 1 through 241, is a true and  
8 correct, full and complete transcription of said  
9 shorthand notes, to the best of my ability.

10 Dated at Deerwood, Minnesota, this 8TH day  
11 of September, 1997.

12

13

14

15 Judy A. Steinke

16 Shorthand Reporter

17 Notary Public

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

## 1 S I G N A T U R E P A G E

2 I, EMANUEL RUBIN, M.D., the deponent,  
3 hereby certify that I have read the foregoing  
4 transcript, Volume I, consisting of pages 1 through  
5 241, and that said transcript is a true and correct,  
6 full and complete transcription of my deposition,  
7 except per the attached corrections, if any.

8

9 (Please check one.)

10 \_\_\_\_\_ Yes, changes were made per the attached

11 (#) \_\_\_\_\_ Signature Page Addendums.

12

13 \_\_\_\_\_ I have made no changes.

14

15

16

17

18

19 EMANUEL RUBIN, M.D.

20 Deponent

21 Sworn and subscribed to before me this \_\_\_\_\_ day of

22

23 , .

24 Notary Public

25 My commission expires \_\_\_\_\_.

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953